

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION AT CLEVELAND

4 -----X
5 IN RE: : Case No. 1:17-md-2804
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7 OPIATE LITIGATION :
8 CASE TRACK THREE :
9 VOLUME 15 :
10 JURY TRIAL :
11 (Pages 3781 - 4028) :
12 October 25, 2021 :
13 -----X

14 TRANSCRIPT OF JURY TRIAL PROCEEDINGS

15 HELD BEFORE THE HONORABLE DAN AARON POLSTER

16 SENIOR UNITED STATES DISTRICT JUDGE

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1 (In open court at 8:43 a.m.)

08:43:25 2 COURTROOM DEPUTY: All rise.

08:43:26 3 THE COURT: Okay. Everyone can be seated.

08:43:45 4 (Brief pause in proceedings).

08:43:53 5 THE COURT: All right. I've read everyone's briefs
08:43:57 6 and the cases that both sides cited. I have concluded that the
08:44:08 7 appropriate thing to do is bring each of the jurors in
08:44:15 8 individually as I did last Friday, instruct each juror that
08:44:23 9 they are completely -- to completely disregard anything that
08:44:29 10 former Juror No. 4 showed them or said to them and make sure
08:44:34 11 they can follow that instruction, and then ask them if anything
08:44:41 12 that that juror said or did leads them to believe they can no
08:44:48 13 longer be a fair and impartial juror. Anyone who says yes is
08:44:53 14 out. I'm not going to make any attempt to rehabilitate them.

08:44:57 15 I think as an added precaution I'll ask them that if
08:45:01 16 anything else that has occurred in the roughly one month since
08:45:05 17 they've been sworn causes them to doubt whether they can be
08:45:08 18 fair and impartial. And then assuming we have an adequate
08:45:12 19 number of jurors, to proceed.

08:45:18 20 The cases that the defendants cited all deal with
08:45:22 21 situations after the fact when the extraneous information or
08:45:31 22 independent tests that a juror did improperly came to light
08:45:36 23 after the verdict. And also in those situations the extraneous
08:45:48 24 information and/or test went to the heart of the case, and it
08:45:53 25 was clearly prejudicial. It went -- you know, it went to the

08:45:56 1 heart of the case. The speed of the automobile, the cause of
08:45:59 2 the fire, et cetera. It was the -- what the offending juror
08:46:06 3 had did went to the essence of the issues in dispute.

08:46:13 4 This case is not going to be decided on Narcan or
08:46:17 5 naloxone. I don't recall either side -- either side, the
08:46:20 6 plaintiffs or any of the four defendants mentioning this in
08:46:24 7 opening statement, and I don't think anyone's going to mention
08:46:26 8 it ---

08:46:28 9 Robert, I don't think this mic's on. Can you take
08:46:32 10 care of it, please.

08:46:33 11 I don't think any of the defendants are even going to
08:46:35 12 mention it in final argument. It's extraneous and it's
08:46:44 13 irrelevant as to whether or not the plaintiffs can prove their
08:46:47 14 public nuisance claims against any or all of the defendants.
08:46:51 15 And I'm confident from the answers of the jurors that most of
08:46:53 16 them ignored it, what this juror -- ex-Juror No. 4 said.

08:47:06 17 So it's clear from the case law a mistrial in the
08:47:12 18 middle of a trial is the very last resort, and if there are any
08:47:17 19 measures short of mistrial that the judge feels can address the
08:47:20 20 issue, that's what the judge should do. And so that's what I'm
08:47:24 21 going to do.

08:47:31 22 MS. SULLIVAN: And, Your Honor --

08:47:32 23 THE COURT: I also want to point out what should be
08:47:35 24 obvious. One of my responsibilities is the preservation of
08:47:40 25 judicial resources and the most effective and efficient use of

08:47:45 1 judicial resources. It took us more than two months to pick
08:47:48 2 this jury. I've been, you know, in the courtroom on one side
08:47:53 3 or the other for 45-plus years. I've never seen a more
08:47:58 4 diligent or attentive jury in all my 45-plus years.

08:48:01 5 I have no idea what they're going do at the end, but I
08:48:04 6 know it's going to be based on attention and detail and doing
08:48:08 7 the right thing. Because they're paying attention all the
08:48:13 8 time. Every time I look at them, they are focused. All right?
08:48:16 9 They're not daydreaming. They're not wandering. They're not
08:48:20 10 dozing. Trust me, I've had that. All right? So -- and this
08:48:25 11 trial was postponed twice because of COVID.

08:48:28 12 I mean, none of the cases anyone cited, of course,
08:48:32 13 dealt with trials that were conducted during COVID because
08:48:34 14 fortunately that never happened before. You know, a lot of
08:48:39 15 people said we couldn't pull this off and it was a foolish
08:48:45 16 thing to start this trial and try to do it when we did. I felt
08:48:48 17 we could do it safely. So far we haven't had any issues. No
08:48:53 18 one has any idea what the course of this pandemic is going to
08:48:58 19 be. Just about everyone's thoughts, predictions, prophecies
08:49:04 20 where been wrong. Certainly mine were. So, since no one can
08:49:09 21 predict the future and we've done pretty well so far, we're
08:49:13 22 halfway through, that's another reason to go forward and not
08:49:17 23 try to redo it. Because given my professional commitments -- I
08:49:25 24 mean, I have a whole lot of criminal defendants who have been
08:49:27 25 waiting for over a year for a trial and they've been locked up

08:49:32 1 and I've got a constitutional obligation to give them their
08:49:35 2 trials. Everyone else has professional obligations, personal
08:49:41 3 obligations. I have no idea when we could retry this, and this
08:49:43 4 is a case of national importance because it's a Bellwether for
08:49:51 5 the pharmacies to really whether or not the plaintiffs' theory
08:49:55 6 of liability will resonate with a jury. The plaintiffs think
08:49:59 7 it will; the defendants think it won't. Well, we'll find out.
08:50:02 8 And it's important to find out, and so we're going to make
08:50:05 9 every effort to do that.

08:50:07 10 So that's what I plan to do and then assuming -- I
08:50:11 11 mean, we've got 13 jurors now. We have way more than we need.
08:50:16 12 If we loss one or two, we loss one or two, I really don't think
08:50:23 13 we'll loss any, but if any juror who says I doubt -- you know,
08:50:27 14 I have any concern I can be fair and impartial is going to be
08:50:29 15 out. I'm not going to endeavor to rehabilitate anyone if an
08:50:32 16 answer is given like that. So that's what I plan to do.

08:50:34 17 And then -- then we'll proceed with the plaintiffs'
08:50:40 18 next witness. But I appreciate everyone's very thorough
08:50:44 19 briefing.

08:50:46 20 MS. SULLIVAN: Your Honor, I understand you've ruled,
08:50:51 21 so just briefly, this is an issue that we do not believe can be
08:50:51 22 cured as acknowledged by the plaintiffs' counsel. Everybody
08:50:54 23 was affected. Clearly Juror No. 4 believes --

08:50:57 24 THE COURT: Ms. Sullivan, you -- you don't need to say
08:50:59 25 anything further. I understand -- I mean, you've made your

08:51:02 1 argument. All right?

08:51:03 2 MS. SULLIVAN: Thank you, Judge. Thank you.

08:51:06 3 THE COURT: I just, you know, I disagree, but, you
08:51:08 4 preserved your issue.

08:51:12 5 MR. LANIER: And, Your Honor, for the record I put
08:51:13 6 this into writing in front of the Court, but in the midst of
08:51:19 7 trial to figure this all out and the immediate reaction, having
08:51:23 8 now a chance to research Sixth Circuit law, I speak on behalf
08:51:29 9 of the plaintiffs saying that this is not an incurable
08:51:32 10 situation, and we believe if you polled the jury, as you're
08:51:35 11 saying, as long as the jury commits that they can be fair and
08:51:38 12 independent, then we are absolutely fine proceeding. And I
08:51:42 13 don't want anything I said on Friday to misdirect the Court or
08:51:46 14 any appellate court in that regard.

08:51:49 15 THE COURT: That's okay. I mean, Mr. Lanier, you said
08:51:53 16 what you said. I encouraged everyone to think about it,
08:51:56 17 reflect, talk to their clients. Everyone did that. So
08:52:01 18 let's -- I mean, as I have. I mean, I said some things. I
08:52:07 19 thought about them some more. I've looked at some cases. Read
08:52:11 20 what everyone said, and then that's the way to make a decision
08:52:15 21 of this -- of consequence to take some time to reflect on it.
08:52:22 22 And that's what everyone's done and I appreciate that.

08:52:24 23 So I think what I will do, I'll ask Mr. Pitts to bring
08:52:28 24 in the jurors one by one as we did on Friday.

08:52:41 25 It's actually a couple minutes before 9:00 so I'll

08:52:43 1 wait till 9:00. Good point.

08:52:44 2 Since we have a couple minutes, I don't know if anyone
08:52:49 3 did any further work on the exhibits. I think -- what have I
08:52:55 4 got here? There was a list from the plaintiffs for
08:53:08 5 Tasha Polster. Two pages, one and a half pages.

08:53:11 6 Do the defendants have any objection to any of those?

08:53:17 7 MS. SWIFT: Your Honor, Kate Swift for Walgreens. We
08:53:20 8 do have a couple of objections of that. I'm happy to walk
08:53:21 9 through those right now.

08:53:21 10 THE COURT: All right. If we can do it quickly, I'll
08:53:22 11 take them up. If not, we'll put them off.

08:53:23 12 Which ones?

08:53:24 13 MS. SWIFT: Sure. The first one is P19927, which is
08:53:28 14 Ms. Polster's personnel file, which was marked highly
08:53:32 15 confidential for perhaps obvious reasons. We don't believe --

08:53:34 16 THE COURT: Wait a minute. Hold it. One -- all
08:53:36 17 right. Ms. Swift, I'm sorry, I've got on the list the
08:53:41 18 plaintiffs gave me, 19927 says an investigation report of
08:53:45 19 Douglas Winland.

08:53:47 20 MS. SWIFT: I'm looking at the list that plaintiffs
08:53:49 21 gave me.

08:53:49 22 THE COURT: All right. Well, look, this isn't working
08:53:52 23 well already, so, see if you can get this straightened out and
08:53:55 24 then --

08:53:56 25 MS. SWIFT: Sure. Happy to.

08:53:57 1 THE COURT: -- I'll do it another time. I mean,
08:53:59 2 I'm -- I've got a list that was given to me last week by the
08:54:02 3 plaintiffs, and the first one is 19927. It says investigation
08:54:07 4 report of Douglas Winland.

08:54:09 5 MS. SWIFT: We object to that one too, but I don't
08:54:11 6 have that on the list right in front of me.

08:54:13 7 THE COURT: All right, look --

08:54:15 8 MS. SWIFT: We'll work with the plaintiffs on it.

08:54:17 9 THE COURT: I'll give this back to the plaintiffs.
08:54:19 10 Figure it all out and we'll deal with it another time.

08:54:23 11 MR. WEINBERGER: Your Honor, while we have some
08:54:25 12 time --

08:54:25 13 THE COURT: Well, let me --

08:54:27 14 MR. WEINBERGER: I'm sorry --

08:54:28 15 THE COURT: So that needs work.

08:54:30 16 What about with Dr. Alexander? Maybe we can take care
08:54:34 17 of that. Any exhibits with Dr. Alexander.

08:54:39 18 MS. SWIFT: Your Honor, before we move off
08:54:41 19 Ms. Polster, I just want to make clear. Defendants have some
08:54:43 20 exhibits that we'd like to offer with her as well.

08:54:45 21 THE COURT: Well, sure you do. But have you gone over
08:54:46 22 those with the plaintiffs?

08:54:47 23 MS. SWIFT: I have sent them to the plaintiffs, yes,
08:54:51 24 Your Honor.

08:54:51 25 THE COURT: See if you can work this out, get me a

08:54:52 1 list of the exhibits that the plaintiffs are going to offer, a
08:54:55 2 list the defendants are going to offer and just some sort of a
08:54:57 3 mark where anyone objects and then I'll go through those.

08:55:01 4 MS. SWIFT: We will, Your Honor. Thank you.

08:55:02 5 THE COURT: All right. What about Dr. Alexander?

08:55:08 6 MR. WEINBERGER: We have no exhibits to move --

08:55:09 7 THE COURT: Okay.

08:55:12 8 MR. WEINBERGER: -- into evidence.

08:55:13 9 THE COURT: That's easy.

08:55:14 10 What the defendants?

08:55:18 11 MS. FIEBIG: Giant Eagle has two exhibits that we were
08:55:18 12 hoping to admit through Dr. Alexander. We've shared them with
08:55:19 13 plaintiffs.

08:55:19 14 THE COURT: Let me see them, Ms. Fiebig.

08:55:24 15 With two, we may be able to get those done quickly.

08:55:26 16 Any of the other defendants have anything with
08:55:29 17 Dr. Alexander?

08:55:33 18 MR. SWANSON: No, Your Honor.

08:55:34 19 THE COURT: All right. Well, we should be able to
08:55:36 20 take a quick look at these two.

08:55:46 21 All right. We've got Exhibits 1328 and 1329.

08:55:53 22 They're -- looks like government hearings. I don't know, are
08:55:59 23 you proposing to admit the whole thing, or just the portion of
08:56:04 24 Dr. Alexander's testimony?

08:56:07 25 MS. FIEBIG: Yes, we have the page numbers that we can

08:56:10 1 offer for admission.

08:56:12 2 MR. WEINBERGER: Your Honor, these are impeachment
08:56:14 3 materials and shouldn't be admit into evidence. This is prior
08:56:20 4 testimony of his that they impeached him on or attempted to
08:56:23 5 impeach him on. His testimony in court is the testimony to --
08:56:28 6 for the jury to consider, not --

08:56:30 7 THE COURT: Well, I tend to agree. I mean, you
08:56:32 8 cross-examined him on these and he didn't -- he didn't disavow
08:56:37 9 them.

08:56:38 10 MS. FIEBIG: He didn't disavow them, but we think that
08:56:41 11 his --

08:56:42 12 THE COURT: Do you think they're fundamentally
08:56:44 13 different than what he said? Anything in here is fundamentally
08:56:47 14 different? I think there is a rule of evidence that a prior
08:56:52 15 statement that's directly contradictory may be admissible under
08:56:57 16 certain circumstances, but I don't -- didn't recall that.

08:57:00 17 MS. FIEBIG: That's right, Your Honor. And that's
08:57:03 18 801(d)(1)(A). We do think that this is an inconsistent
08:57:06 19 statement that he provided in a sworn hearing.

08:57:07 20 THE COURT: Well, what specifically -- what page of --
08:57:11 21 you know, let's start with 1328. Give me a page and where you
08:57:17 22 think something was directly inconsistent.

08:57:17 23 MS. FIEBIG: Sure. In 1328, on Page 41, which is
08:57:25 24 Bates stamped 132800045 --

08:57:29 25 THE COURT: Hold it, please. Well, Page 41 of the --

08:57:39 1 MS. FIEBIG: The page number at the top.

08:57:40 2 THE COURT: All right. I've got it. Now, what
08:57:42 3 statement?

08:57:42 4 MS. FIEBIG: So you'll see starting in the middle of
08:57:45 5 the page he testified, "In my testimony I'd like to mention
08:57:47 6 three important steps to address this problem." He started
08:57:49 7 with prescribing practices.

08:57:52 8 THE COURT: Right.

08:57:53 9 MS. FIEBIG: Talked about addiction. And then how
08:57:57 10 people should properly dispose of opioids.

08:58:05 11 THE COURT: Yeah. Yes. Well, I don't see anything
08:58:09 12 directly contradictory to what he said in court.

08:58:13 13 MS. FIEBIG: It's not that it's directly contradictory
08:58:16 14 to what he said in court, it's that the statements that he
08:58:18 15 made --

08:58:19 16 THE COURT: Well, that's the only basis that you could
08:58:21 17 possibly admit it. So, without that, it's not coming in.

08:58:23 18 All right. The next document is 1329? What's
08:58:28 19 directly contradictory there?

08:58:29 20 MS. FIEBIG: But there's actually a couple of other
08:58:31 21 pages in 1328.

08:58:32 22 THE COURT: All right.

08:58:32 23 MS. FIEBIG: And I'm happy to provide them to
08:58:34 24 plaintiffs and the Court --

08:58:36 25 THE COURT: All right. If you can -- if you can show

08:58:39 1 something in here that is directly contradictory to what he
08:58:43 2 said, I'll consider that, and that alone. So show it to the
08:58:48 3 plaintiffs and if -- you know, the plaintiffs agree, fine, if
08:58:51 4 they disagree, then I'll deal with it.

08:58:53 5 MS. FIEBIG: Understood, Your Honor.

08:58:54 6 THE COURT: But unless it's directly contradictory it
08:58:59 7 doesn't come in.

08:59:10 8 All right. And, Mr. Weinberger, you had something you
08:59:19 9 wanted to raise.

08:59:19 10 MR. WEINBERGER: Your Honor, this motion we filed a
08:59:21 11 motion to admit.

08:59:22 12 THE COURT: I saw that -- I'll wait -- this was
08:59:24 13 something I was hoping the parties could work out with
08:59:30 14 Special Master Cohen. I don't know, I'd still like him to work
08:59:33 15 this out. If he can't, I'll just have to deal with it, so, I
08:59:37 16 don't know if the defendants are objecting to it or not or on
08:59:41 17 what basis, but I had directed -- I think there's several
08:59:44 18 issues that I wanted you to --

08:59:46 19 MR. WEINBERGER: Right.

08:59:46 20 THE COURT: -- work on with Special Master Cohen.
08:59:49 21 This was one of them. There were at least two others.

08:59:54 22 MS. FIEBIG: Understood, Your Honor.

08:59:54 23 MR. WEINBERGER: The other was the IMS contracts, and
08:59:57 24 I have --

08:59:58 25 THE COURT: IMS CSA.

09:00:01 1 MR. WEINBERGER: Right. I have had discussions with
09:00:02 2 them about that.

09:00:03 3 THE COURT: A stipulation or instruction on settlement
09:00:06 4 agreements.

09:00:06 5 MR. WEINBERGER: Right. We submitted a response. We
09:00:10 6 haven't had a chance to discuss our response with the other
09:00:12 7 side, and as to the CSA, the general additional instructions on
09:00:18 8 the CSA, we are going to file this morning our own version.

09:00:23 9 Again, we will discuss --

09:00:26 10 THE COURT: All right. Well, I want you to keep
09:00:27 11 working on it.

09:00:28 12 MR. WEINBERGER: -- with counsel.

09:00:29 13 THE COURT: Use Special Master Cohen to assist you.
09:00:31 14 If parties can't agree, obviously I'll decide it.

09:00:36 15 MR. DELINSKY: And, Your Honor, we'll be putting in
09:00:38 16 something shortly on the IMS today.

09:00:40 17 THE COURT: All right. Well, you can file it, but
09:00:42 18 again, I want you to try and -- you ought to be able to come
09:00:45 19 together on all three of these.

09:00:49 20 Okay. Now we'll start bringing in the jurors, please.
09:00:56 21 One by one.

09:02:03 22 (Brief pause in proceedings).

09:02:15 23 (Juror returned to courtroom).

09:02:15 24 THE COURT: Good morning, ma'am.

09:02:17 25 You can take your mask off. This will be very quick.

09:02:20 1 I hope you had a good weekend.

09:02:22 2 First, I am instructing you that you are to completely
09:02:27 3 disregard anything that former Juror 4 showed to you or said to
09:02:34 4 you.

09:02:35 5 One, it was obviously improper that she did it, and
09:02:39 6 two, it has no relevance to the case. So can you follow that
09:02:43 7 instruction?

09:02:43 8 A JUROR: Yes.

09:02:44 9 THE COURT: Okay. Second, is there anything about
09:02:48 10 what former Juror No. 4 showed you or said to you that casts
09:02:54 11 any doubt in your mind as to whether you can continue to be a
09:02:58 12 fair and impartial juror in this case?

09:03:01 13 A JUROR: No. It didn't really change anything about
09:03:03 14 what I'm thinking about the case.

09:03:05 15 THE COURT: Okay. And just to be safe, is there
09:03:09 16 anything else that has occurred in the roughly one month since
09:03:14 17 I gave you the oath and swore you in with your fellow jurors
09:03:18 18 that casts any doubt in your mind as to whether you can
09:03:21 19 continue to be fair and impartial in this case?

09:03:23 20 A JUROR: No.

09:03:24 21 THE COURT: Okay. Thank you.

09:03:25 22 A JUROR: Thank you.

09:03:27 23 (Juror excused from courtroom).

09:04:10 24 (Juror returned to courtroom).

09:04:10 25 THE COURT: Good morning, ma'am. You can take your

09:04:12 1 mask off for a minute. This won't take long.

09:04:15 2 A JUROR: Good morning.

09:04:16 3 THE COURT: Hope you had a good weekend.

09:04:18 4 A JUROR: I did. Thank you.

09:04:19 5 THE COURT: I am instructing you that you must
09:04:21 6 completely ignore, disregard not consider anything that former
09:04:27 7 Juror No. 4 showed you or said to you.

09:04:30 8 Can you follow that instruction?

09:04:32 9 A JUROR: Yes, I can.

09:04:33 10 THE COURT: Obviously it was completely improper what
09:04:36 11 she did and said, and it's also not relevant to the issues in
09:04:39 12 this case.

09:04:41 13 Second, is there anything about what happened with
09:04:45 14 former Juror No. 4 that causes you to doubt whether you can
09:04:51 15 continue to be a fair and impartial juror in this case?

09:04:53 16 A JUROR: No.

09:04:54 17 THE COURT: All right. And just to be sure, is there
09:04:57 18 anything else that has occurred in the roughly one month since
09:05:01 19 I gave you the oath that causes you to doubt whether you can
09:05:06 20 continue to be fair and impartial in this case to both sides?

09:05:11 21 Is that a no?

09:05:13 22 A JUROR: I'm fine. I can continue do this role.

09:05:15 23 THE COURT: Okay. You have no doubt of your ability
09:05:19 24 to be fair and impartial?

09:05:19 25 A JUROR: I can be fair and impartial.

09:05:21 1 THE COURT: Fair and impartial or -- I just want to
09:05:24 2 make sure --

09:05:25 3 A JUROR: Fair and impartial.

09:05:26 4 THE COURT: Okay. All right. Just wanted to be sure.

09:05:29 5 Thank you, ma'am.

09:05:29 6 A JUROR: You're welcome.

09:05:29 7 (Juror excused from courtroom).

09:05:29 8 (Juror returned to courtroom).

09:06:12 9 THE COURT: Good morning, ma'am.

09:06:13 10 A JUROR: Good morning.

09:06:14 11 THE COURT: Hope you had a good weekend.

09:06:16 12 I am instructing you that you must completely
09:06:20 13 disregard anything that former Juror No. 4 said or did.

09:06:25 14 A JUROR: Yes, sir.

09:06:26 15 THE COURT: Can you follow that instruction?

09:06:28 16 A JUROR: Absolutely, sir.

09:06:29 17 THE COURT: Okay. It was improper what she did, and
09:06:31 18 it's not relevant to the issues you have to decide in this
09:06:35 19 case.

09:06:36 20 A JUROR: Okay.

09:06:37 21 THE COURT: Second, is there anything about what
09:06:40 22 former Juror No. 4 said or did that causes you to doubt whether
09:06:46 23 you could continue to be a fair and impartial jury -- juror in
09:06:50 24 this case?

09:06:50 25 A JUROR: No. I just -- I let it in one ear and out

09:06:54 1 the other.

09:06:55 2 THE COURT: All right. That's fine.

09:06:56 3 And just to be sure, is there anything else that might
09:07:00 4 have occurred in the roughly one month since you took the oath
09:07:02 5 that causes you to doubt your ability to be fair and impartial
09:07:06 6 in this case?

09:07:07 7 A JUROR: No. Nothing. Listening with open ears.

09:07:11 8 THE COURT: Okay. Good. Thank you very much.

09:07:13 9 A JUROR: You're welcome.

09:07:13 10 (Juror excused from courtroom).

09:07:48 11 (Juror returned to courtroom).

09:07:48 12 THE COURT: Good morning, sir.

09:07:50 13 A JUROR: Good morning.

09:07:51 14 THE COURT: You can take off your mask, please.

09:07:53 15 I am instructing you that you must completely
09:07:58 16 disregard anything that former Juror No. 4 said or did.

09:08:00 17 Can you do that?

09:08:01 18 A JUROR: Yes.

09:08:02 19 THE COURT: All right. Second, has anything that
09:08:08 20 former Juror No. 4 said or did cause you to doubt in any way
09:08:13 21 your ability to continue to be a fair and impartial juror in
09:08:16 22 this case?

09:08:17 23 A JUROR: No.

09:08:19 24 THE COURT: All right. And just to be sure, is there
09:08:21 25 anything else that might have occurred over the last month or

09:08:24 1 so since you took the oath that causes you to be doubt your
09:08:28 2 ability to be a fair and impartial juror in this case?

09:08:33 3 A JUROR: No, sir.

09:08:33 4 THE COURT: All right. Thank you.

09:08:35 5 (Juror excused from courtroom).

09:09:17 6 (Juror returned to courtroom).

09:09:17 7 THE COURT: Good morning, ma'am. You can take your
09:09:19 8 mask off for a minute while I -- this should just take a minute
09:09:22 9 or two.

09:09:22 10 First, I am instructing you that you must completely
09:09:26 11 disregard anything that former Juror No. 4 said or did.

09:09:31 12 Can you follow that instruction?

09:09:33 13 A JUROR: Absolutely.

09:09:33 14 THE COURT: And, second, is there anything that former
09:09:36 15 Juror No. 4 said or did that casts any doubt in your mind about
09:09:42 16 your ability to continue to be a fair and impartial juror in
09:09:48 17 this case?

09:09:48 18 A JUROR: Absolutely not.

09:09:49 19 THE COURT: And just to be sure, is there anything
09:09:51 20 else that might have occurred in the roughly one month since
09:09:54 21 you took the oath that causes you to doubt your ability to
09:09:55 22 continue to be a fair and impartial juror in this case?

09:09:58 23 A JUROR: No, sir.

09:09:58 24 THE COURT: All right. Thank you very much, ma'am.

09:09:58 25 (Juror excused from courtroom).

09:10:38 1 (Juror returned to courtroom) .

09:10:38 2 THE COURT: Good morning, ma'am. I hope you had a
09:10:41 3 good weekend, and you can take off your mask for a minute.

09:10:44 4 A JUROR: Thank you.

09:10:45 5 THE COURT: First, I am instructing you that you must
09:10:47 6 completely disregard anything that former Juror No. 4 said or
09:10:51 7 did.

09:10:51 8 Can you follow that instruction, ma'am?

09:10:53 9 A JUROR: Yes.

09:10:54 10 THE COURT: Second, is there anything that former
09:10:56 11 Juror No. 4 said or did that causes you to doubt in any way
09:11:01 12 your ability to continue to be a fair and impartial juror in
09:11:04 13 this case?

09:11:05 14 A JUROR: No.

09:11:06 15 THE COURT: And just to be sure, is there anything
09:11:08 16 else that might have occurred in the roughly one month since I
09:11:11 17 gave you the oath that causes you to doubt in any way your
09:11:15 18 ability to continue to be a fair and impartial juror in this
09:11:20 19 case?

09:11:20 20 A JUROR: No.

09:11:20 21 THE COURT: Thank you.

09:11:22 22 (Juror excused from courtroom) .

09:11:55 23 (Juror returned to courtroom) .

09:11:55 24 THE COURT: Good morning, sir.

09:11:57 25 A JUROR: Good morning.

09:11:58 1 THE COURT: I am instructing you that you must
09:12:00 2 completely disregard anything that former Juror No. 4 said or
09:12:04 3 did.

09:12:05 4 Can you follow that instruction?

09:12:07 5 A JUROR: Understood. Yeah. Absolutely.

09:12:09 6 THE COURT: And, second, is there anything that former
09:12:11 7 Juror No. 4 said or did which causes you to doubt in any way
09:12:15 8 your ability to continue to be a fair and impartial juror in
09:12:19 9 this case?

09:12:20 10 A JUROR: Absolutely not.

09:12:21 11 THE COURT: All right. And just to be sure, is there
09:12:23 12 anything else that might have occurred over the last month that
09:12:27 13 causes you to doubt in any way your ability to be -- to
09:12:31 14 continue to be a fair and impartial juror in this case?

09:12:34 15 A JUROR: No, sir.

09:12:34 16 THE COURT: All right. Thank you.

09:12:36 17 A JUROR: All right. Thank you.

09:12:36 18 (Juror excused from courtroom).

09:13:12 19 (Juror returned to courtroom).

09:13:12 20 THE COURT: Good morning, ma'am. I hope you had a
09:13:14 21 good weekend.

09:13:15 22 A JUROR: Good morning.

09:13:16 23 THE COURT: First, I am instructing you that you must
09:13:18 24 completely disregard anything that former Juror No. 4 said or
09:13:22 25 did.

09:13:22 1 Can you follow that instruction, ma'am?

09:13:24 2 A JUROR: Yes.

09:13:25 3 THE COURT: And, second, is there anything about what
09:13:28 4 former Juror 4 -- No. 4 said or did that causes you to doubt in
09:13:34 5 any way your ability to continue to be a fair and impartial
09:13:37 6 juror in this case?

09:13:38 7 A JUROR: No.

09:13:39 8 THE COURT: And just to be sure, is there anything
09:13:42 9 else that might have occurred over the roughly one month since
09:13:46 10 I gave you the oath that causes you to doubt in any way your
09:13:50 11 ability to continue to be a fair and impartial juror in this
09:13:53 12 case?

09:13:56 13 A JUROR: No.

09:13:57 14 THE COURT: Thank you very much.

09:13:58 15 (Juror excused from courtroom).

09:14:33 16 (Juror returned to courtroom).

09:14:33 17 THE COURT: Good morning, ma'am.

09:14:35 18 A JUROR: Good morning.

09:14:36 19 THE COURT: I hope you had a good weekend, and you can
09:14:38 20 take off your mask for a minute, please.

09:14:40 21 I am instructing you that you must completely
09:14:42 22 disregard anything that former Juror No. 4 said or did.

09:14:46 23 Can you follow that instruction, ma'am?

09:14:49 24 A JUROR: I understand, and I agree.

09:14:51 25 THE COURT: Okay. And, second, is there anything

09:14:53 1 about what former Juror No. 4 said or did that causes you to
09:14:58 2 doubt in any way your ability to continue to be a fair and
09:15:02 3 impartial juror in this case?

09:15:04 4 A JUROR: None whatsoever.

09:15:05 5 THE COURT: All right. And just to be sure, is there
09:15:07 6 anything else that might have occurred over the roughly one
09:15:10 7 month since I gave you the oath that causes you to doubt your
09:15:14 8 ability to continue to be a fair and impartial juror in this
09:15:16 9 case?

09:15:17 10 A JUROR: No.

09:15:18 11 THE COURT: Thank you very much, ma'am.

09:15:19 12 A JUROR: Thank you.

09:15:19 13 (Juror excused from courtroom).

09:15:57 14 (Juror returned to courtroom).

09:15:57 15 THE COURT: Good morning, sir.

09:15:59 16 A JUROR: Good morning.

09:15:59 17 THE COURT: You can take your mask off for a minute,
09:16:02 18 please.

09:16:02 19 First, I am instructing you that you must completely
09:16:04 20 disregard anything that former Juror No. 4 said or did.

09:16:10 21 Can you follow that instruction, sir?

09:16:11 22 A JUROR: Yes.

09:16:12 23 THE COURT: Second, is there anything about what
09:16:13 24 former Juror No. 4 said or did that causes you to doubt in any
09:16:20 25 way your ability to be -- to continue to be fair and impartial

09:16:23 1 in this case?

09:16:25 2 A JUROR: No.

09:16:26 3 THE COURT: And just to be sure, is there anything
09:16:27 4 else that might have occurred over the roughly one month since
09:16:30 5 I gave you the oath that causes you any concern about
09:16:34 6 continuing to be a fair and impartial juror in this case?

09:16:37 7 A JUROR: No.

09:16:38 8 THE COURT: Thank you very much.

09:16:39 9 A JUROR: All right. Thank you.

09:16:39 10 (Juror excused from courtroom).

09:17:13 11 (Juror returned to courtroom).

09:17:13 12 THE COURT: Good morning, ma'am.

09:17:14 13 A JUROR: Good morning.

09:17:17 14 THE COURT: First, I am instructing you that you must
09:17:20 15 completely disregard anything that former Juror No. 4 said or
09:17:25 16 did.

09:17:25 17 Can you do that?

09:17:26 18 A JUROR: Yes.

09:17:28 19 THE COURT: Second, is there anything about what
09:17:29 20 former Juror No. 4 said or did that causes you to doubt in any
09:17:35 21 way your ability to continue to be a fair and impartial juror
09:17:38 22 in this case?

09:17:39 23 A JUROR: No.

09:17:40 24 THE COURT: And just to be sure, is there anything
09:17:42 25 else that might have occurred in the roughly one month since I

09:17:46 1 gave you the oath that causes you to doubt in any way your
09:17:49 2 ability to continue to be a fair and impartial juror in this
09:17:52 3 case?

09:17:56 4 A JUROR: No.

09:17:56 5 THE COURT: Thank you very much.

09:17:57 6 A JUROR: Thank you.

09:17:57 7 (Juror excused from courtroom).

09:18:34 8 (Juror returned to courtroom).

09:18:34 9 THE COURT: Good morning, sir. If you could take your
09:18:36 10 mask off for a minute, please.

09:18:37 11 A JUROR: Sure.

09:18:38 12 THE COURT: First, I am instructing you that you must
09:18:42 13 completely disregard anything that former Juror No. 4 said or
09:18:46 14 did.

09:18:46 15 Can you do that, sir?

09:18:48 16 A JUROR: Yes, I can.

09:18:49 17 THE COURT: Second, is there anything about what
09:18:52 18 former Juror No. 4 said or did that causes you to doubt in any
09:18:57 19 way your ability to continue to be a fair and impartial juror
09:19:00 20 in this case?

09:19:03 21 A JUROR: No.

09:19:04 22 THE COURT: And just to be sure, is there anything
09:19:06 23 else that might have occurred over the roughly one month since
09:19:09 24 I gave you the oath that causes you to doubt in any way your
09:19:12 25 ability to continue to be a fair and impartial juror in this

09:19:15 1 case?

09:19:16 2 A JUROR: No.

09:19:17 3 THE COURT: Thank you very much.

09:19:17 4 (Juror excused from courtroom).

09:20:00 5 (Juror returned to courtroom).

09:20:00 6 A JUROR: Good morning.

09:20:00 7 THE COURT: Good morning, sir.

09:20:06 8 I am instructing you that you must completely
09:20:08 9 disregard anything that former Juror No. 4 said or did.

09:20:14 10 Can you follow that instruction, sir?

09:20:16 11 A JUROR: Yes.

09:20:17 12 THE COURT: Okay. Second, is there anything about
09:20:19 13 what former Juror No. 4 said or did that causes you to doubt in
09:20:25 14 any way your ability to continue to be a fair and impartial
09:20:28 15 juror in this case?

09:20:29 16 A JUROR: No, Your Honor.

09:20:30 17 THE COURT: And just to make sure, is there anything
09:20:33 18 else, sir, that might have occurred over the last month since I
09:20:36 19 gave you the oath that causes you to doubt in any way your
09:20:39 20 ability to continue to be a fair and impartial juror in this
09:20:43 21 case?

09:20:44 22 A JUROR: No.

09:20:45 23 THE COURT: Thank you.

09:20:45 24 (Juror excused from courtroom).

09:21:14 25 (Juror returned to courtroom).

09:21:14 1 COURTROOM DEPUTY: That's all.

09:21:17 2 THE COURT: Okay. All right. Well, based on each
09:21:22 3 juror's answer, I am confident that each juror can follow my
09:21:27 4 instruction to completely disregard what former Juror No. 4
09:21:31 5 said and did and that each juror doesn't feel that whatever
09:21:37 6 they remember or recall will affect their ability to be fair
09:21:43 7 and impartial or anything else that's occurred in the last
09:21:45 8 month would do so. So I'm going to go forward.

09:21:49 9 Okay. We can bring -- I assume the plaintiffs are
09:21:54 10 ready with its witness. We're going to have a deposition, I
09:21:58 11 think.

09:21:58 12 MR. LANIER: Yes, Your Honor, we have a deposition and
09:21:59 13 then after that we'll do the video hookup of Nelson.

09:22:04 14 THE COURT: Okay. All right.

09:22:07 15 MR. SWANSON: Your Honor, before you do, Brian Swanson
09:22:09 16 for Walgreens. Appreciate the process that you just undertook.
09:22:12 17 We believe that the prejudice to our client cannot be cured,
09:22:16 18 and so we believe that a mistrial is appropriate, but just
09:22:18 19 wanted to have that on the record.

09:22:20 20 Thank you.

09:22:21 21 THE COURT: That's fine.

09:22:22 22 MR. MAJORAS: Walmart joins, Your Honor.

09:22:26 23 MR. DELINSKY: CVS as well, Your Honor.

09:22:32 24 MS. SULLIVAN: Giant Eagle as well.

09:22:44 25 THE COURT: I had asked clients to be on for this

09:22:47 1 portion. They can stay on if they want but they're not
09:22:49 2 required to be on, those who were on the phone.

09:24:36 3 (Brief pause in proceedings).

09:25:19 4 (Jury returned to courtroom at 9:24 a.m.)

09:25:19 5 THE COURT: Good morning. Please be seated.

09:25:22 6 All right. Mr. Lanier, you may call your next
09:25:25 7 witness, please.

09:25:26 8 MR. LANIER: Thank you, Your Honor.

09:25:26 9 May it please the Court, ladies and gentlemen. Good
09:25:30 10 morning.

09:25:30 11 Your Honor, our -- my voice is a little rough.

09:25:35 12 Your Honor, our next witness is Mark Vernazza. It
09:25:41 13 will be a videotape deposition. He spells his name
09:25:46 14 V-e-r-n-a-z-z-a. He is CVS's corporate counsel who testified
09:25:56 15 in the deposition in what's called a 30(b)(6) capacity. That
09:26:00 16 means, in essence, he's speaking for the corporation because
09:26:03 17 companies need someone to speak for them. So he was designated
09:26:07 18 by the company to speak for the company.

09:26:11 19 The whole deposition play, Your Honor, is an hour and
09:26:16 20 8 minutes. 37 of that is what we've designated as plaintiffs.

09:26:20 21 31 minutes is what CVS has designated as defendants, and with
09:26:25 22 the Court's permission, we're ready to play it.

09:26:31 23 MR. DELINSKY: Your Honor, may I just add one line to
09:26:33 24 Mr. Lanier's --

09:26:33 25 THE COURT: Yes, Mr. Delinsky.

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09:26:35 1 MR. DELINSKY: Good morning, ladies and gentlemen.
09:26:37 2 This deposition concerns the distribution issues in
09:26:41 3 the case, shipments from the warehouses to the farms. It does
09:26:50 4 not concern what happens in the pharmacy when prescriptions are
09:26:55 5 presented.

09:26:55 6 Thank you.

09:26:57 7 MR. LANIER: So, with that, Dan.

09:27:03 8 My name is Eric Kennedy. We briefly met.

09:27:03 9 Can you please state full name for the record.

09:27:06 10 THE WITNESS: My full name is --

09:27:08 11 MR. LANIER: Pause. We have no video.

09:27:12 12 Now we do. Can we start all over again, please.

09:27:15 13 Thank you.

09:27:15 14 DEPOSITION TESTIMONY OF MARK ROBERT VERNAZZA

09:27:19 15 Q. My name's Eric Kennedy. We briefly met.

09:27:22 16 Could you please state your full name for the record.

09:27:24 17 A. My full name is Mark Robert Vernazza.

09:27:28 18 Q. And what is your current employer?

09:27:30 19 A. CVS Pharmacy.

09:27:33 20 Q. And what is your present position with CVS Pharmacy, Inc.?

09:27:37 21 A. Senior legal counsel.

09:27:40 22 Q. Tell me about your current duties and responsibilities.

09:27:44 23 A. I assist the company primarily with respect to litigation
09:27:50 24 and government investigations.

09:27:52 25 Q. I think you've indicated that you are here in response to

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09:27:55 1 those notices and you are speaking in behalf of CVS Indiana,
09:28:03 2 LLC; correct?

09:28:04 3 A. Yes, and CVS RX Services, Inc.

09:28:07 4 Q. That we're going to refer to as the CVS defendants as we
09:28:07 5 move forward.

09:28:11 6 The other entities that would have provided services
09:28:13 7 to the CVS defendants with respect to the creation and
09:28:16 8 management of suspicious ordering monitoring policies would
09:28:19 9 have been, number one, CVS Pharmacy, Inc., true?

09:28:23 10 A. CVS Pharmacy, Inc., would have provided some of those
09:28:26 11 services, yes.

09:28:26 12 Q. And CVS Pharmacy, Inc., would that be the parent or the
09:28:30 13 owner of the CVS defendants?

09:28:33 14 A. Yes.

09:28:34 15 Q. Can you tell me what efforts you or the CVS defendants have
09:28:41 16 made to provide you with information known or reasonably
09:28:43 17 available to the CVS defendants with respect to the topics that
09:28:46 18 you're going to testify on?

09:28:48 19 A. Yes. I have conducted interviews with the current and
09:29:00 20 former CVS personnel. Those interviews number in excess of 40
09:29:14 21 different individuals that I have interviewed. Many
09:29:17 22 individuals on multiple occasions. I have undertaken a review
09:29:26 23 of a number of different documents in preparation for the
09:29:30 24 deposition. I have sat with our current suspicious order
09:29:38 25 monitoring team and watched them perform their work for a good

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09:29:48 1 portion of a morning. I have traveled to the Indianapolis
09:29:51 2 distribution center for the purposes of observing their
09:29:55 3 operations and conducting interviews with personnel at that
09:30:04 4 facility. There may be more, but that's what comes to mind.

09:30:10 5 Q. And can you tell me how much time you've put into educating
09:30:13 6 yourself or being educated with respect to the suspicious order
09:30:19 7 monitoring systems programs and procedures at the CVS
09:30:21 8 defendants?

09:30:22 9 A. I can't put a precise time on it. The best of my
09:30:26 10 estimation the amount of time I've spent preparing for this
09:30:30 11 deposition exceeds four weeks of business days.

09:30:36 12 Q. And you understand, as a lawyer, that your testimony here
09:30:40 13 does not necessarily represent your knowledge but represents
09:30:43 14 the knowledge of the CVS defendants? You understand that?

09:30:46 15 A. I understand that as the 30(b)(6) deponent here today.

09:30:51 16 Q. And you understand that your testimony here today
09:30:53 17 represents the positions of the CVS defendants on the topics
09:30:58 18 that we're going to talk about.

09:31:00 19 Do you understand that?

09:31:01 20 A. I understand them being asked to provide corporate
09:31:03 21 testimony.

09:31:03 22 Q. Now, with respect to hydrocodone drugs, HCPs. I'm going to
09:31:03 23 call them hydrocodone drugs. When I call them hydrocodone
09:31:12 24 drugs, I mean HCP's. That's a Schedule III for the most part,
09:31:14 25 what we're going to talk about today, that's a Schedule III

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09:31:17 1 narcotic.

09:31:18 2 Is that true?

09:31:19 3 A. Hydrocodone combination products, yes, were Schedule III
09:31:26 4 drugs up through October of 2014.

09:31:30 5 Q. Did either of the CVS defendants ever distribute controlled
09:31:41 6 substances to any customer, any entity other than a CVS
09:31:47 7 Pharmacy between '06 and '14?

09:31:48 8 A. No.

09:31:49 9 Q. Between 2006 and '14, when a CVS Pharmacy wanted to order
09:32:01 10 hydrocodone drugs from a CVS distributor, tell me what the
09:32:04 11 process was.

09:32:06 12 A. The general process for a CVS Pharmacy ordering a drug such
09:32:17 13 as hydrocodone combination product from a CVS distribution
09:32:23 14 center would begin with an automated program known as the AIMS
09:32:36 15 system, which would calculate a suggested order for that
09:32:39 16 pharmacy with respect to a particular drug for a particular
09:32:45 17 ordering period.

09:32:46 18 That suggested order would take into account certain
09:32:53 19 historical dispensing information as well as what the system
09:32:59 20 understood to be the balance on hand or inventory of the
09:33:05 21 product. It would generate a suggested order to restore that
09:33:13 22 pharmacy's inventory level to what would be called the target
09:33:20 23 inventory level. The pharmacy would have the ability to modify
09:33:27 24 that suggested order consistent with the needs of the pharmacy.

09:33:36 25 At that point, the order would get passed through the

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09:33:43 1 mainframe computer system within the company and then subject
09:33:50 2 to different suspicious order monitoring processes placed to
09:33:59 3 the warehouse for distribution.

09:34:01 4 Q. CVS Pharmacy, Inc., would I be correct that they own either
09:34:07 5 directly or indirectly all of the CVS pharmacies in the United
09:34:12 6 States?

09:34:12 7 A. To the best of my corporate knowledge, at this point in
09:34:15 8 time CVS Pharmacy, Inc. owns either directly or indirectly all
09:34:23 9 of the CVS retail pharmacies.

09:34:25 10 Q. CVS Pharmacy, Inc. owns directly or indirectly both the
09:34:31 11 distribution centers we're talking about and the CVS pharmacies
09:34:37 12 across the country; correct?

09:34:38 13 A. While this is not a topic that I undertook preparation on
09:34:42 14 for the purposes of this deposition, to the best of my
09:34:45 15 knowledge that is true.

09:34:46 16 Q. Now, the two CVS defendants both distribute controlled
09:34:53 17 substances; correct?

09:34:54 18 A. They do.

09:34:54 19 Q. To CVS pharmacies; correct?

09:34:56 20 A. Both of the CVS entities named as defendants in this case
09:35:02 21 are distributors of controlled substances.

09:35:06 22 Q. So --

09:35:07 23 A. They are now and have always been only distributors of
09:35:11 24 Schedule III through V controlled substances and have never
09:35:14 25 been distributors of Schedule II controlled substances.

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09:35:23 1 Traditionally those entities have only distributed controlled
09:35:23 2 substances to CVS pharmacies, to the best of my corporate
09:35:26 3 knowledge.

09:35:27 4 Q. Did CVS from 2006 to 2014, did they understand that
09:35:32 5 hydrocodone drugs, HCP's, were a highly addictive drug?

09:35:36 6 A. CVS was familiar with those drugs as being controlled
09:35:43 7 substances in Schedule III. CVS was also aware that controlled
09:35:51 8 substances could be abused or misused. Beyond that, I'm not
09:35:54 9 sure I have corporate knowledge to answer your question.

09:35:58 10 Q. When did CVS, the CVS defendants, first become aware of the
09:36:05 11 Controlled Substance Act of 1971?

09:36:07 12 A. I have no corporate knowledge that CVS has ever been
09:36:11 13 unaware of the controlled substances acted.

09:36:13 14 Q. Should they have been aware of it in 2006?

09:36:19 15 A. I understand that in 2006 CVS was aware of the Controlled
09:36:27 16 Substances Act.

09:36:27 17 Q. Do you know who Mr. Rannazzisi?

09:36:31 18 A. I do.

09:36:31 19 Q. And who is he?

09:36:34 20 A. Mr. Rannazzisi is a former official with the DEA with
09:36:44 21 responsibilities for oversight over DEA's diversion control
09:36:50 22 organization.

09:36:51 23 Q. Take a look at Exhibit 3. That is a -- that is a letter,
09:36:55 24 is it not, from the United States Department of Justice Drug
09:37:04 25 Enforcement Administration which is the Drug Enforcement

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09:37:05 1 Administration; correct?

09:37:05 2 A. The Drug Enforcement Administration is what I would
09:37:10 3 consider to be the DEA, yes.

09:37:12 4 Q. September 26th, 2006, is the date of this letter; true?

09:37:16 5 A. The letter appears to be dated September 27, 2006.

09:37:19 6 Q. CVS Indiana, LLC, one of the defendants in this case, it
09:37:24 7 appears as if they received this letter. True?

09:37:25 8 A. To the best of our corporate knowledge, that is true.

09:37:28 9 Q. The letter, Exhibit 3, from the DEA to one of the CVS
09:37:35 10 defendants. Let's look at the first sentence if we could.

09:37:42 11 It states "This letter is being sent to every
09:37:45 12 commercial entity in the United States registered with the Drug
09:37:50 13 Enforcement Administration, DEA, to distribute controlled
09:37:54 14 substances."

09:37:55 15 CVS Indiana at that point in time was a registrant;
09:37:59 16 correct?

09:37:59 17 A. To my understanding, that's correct.

09:38:00 18 Q. Look at the first sentence under background, if you would.

09:38:09 19 And does it state -- and this is the DEA to CVS
09:38:15 20 Indiana, "As each of you is undoubtedly aware, the abuse
09:38:21 21 non-medical use of controlled prescription drugs is a serious
09:38:24 22 and growing health problem in this country."

09:38:27 23 Do you see that statement?

09:38:29 24 A. I do.

09:38:30 25 Q. Was -- I'm assuming then CVS Indiana was aware of this

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09:38:39 1 statement, that statement by the DEA?

09:38:42 2 A. To the best of my corporate knowledge, CVS received this
09:38:45 3 letter. CVS Indiana received this letter and would have
09:38:49 4 reviewed its contents, including that sentence.

09:38:53 5 Q. Do you know whether CVS Indiana or any other CVS entity
09:38:59 6 disagreed with that statement in 2006?

09:39:00 7 A. I have no knowledge that CVS disagreed with that.

09:39:03 8 Q. Let me ask you this. Let's go on and read further and see
09:39:07 9 what the DEA was telling the CVS defendant from Indiana here.

09:39:11 10 It next states, "The registrant shall" -- you
09:39:15 11 understand -- "shall inform the field division of the
09:39:19 12 administration in his area of suspicious orders when discovered
09:39:25 13 by the registrant" -- and that would be CVS Indiana; correct?

09:39:29 14 A. Yes.

09:39:30 15 Q. -- "suspicious orders" -- this is coming from the
09:39:34 16 regulations -- "suspicious orders include orders of unusual
09:39:38 17 size, orders deviating substantially from a normal pattern and
09:39:44 18 orders of usual frequency."

09:39:45 19 CVS Indiana would have been aware of that statement
09:39:47 20 had they received and read this letter; correct?

09:39:52 21 A. I believe that's correct.

09:39:53 22 Q. Generally, pharmacies have certain responsibilities with
09:40:06 23 respect to filling prescriptions, certain requirements with
09:40:12 24 respect to attempting to prevent diversion, pharmacies have
09:40:19 25 those certain responsibilities. Agreed?

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09:40:21 1 A. There are certain responsibilities under the Controlled
09:40:24 2 Substances Act that are incumbent upon pharmacies and
09:40:28 3 pharmacists with respect to the controlled substance.

09:40:32 4 Certainly one of those is the pharmacist's duty to
09:40:36 5 perform corresponding responsibilities or obligation of the law
09:40:41 6 to perform corresponding responsibility due diligence before
09:40:46 7 dispensing a prescription that's certainly consistent with
09:40:49 8 prevention and diversion.

09:40:51 9 Q. Can we agree that just because the pharmacies have certain
09:40:54 10 responsibilities that you just described, can you agree that
09:40:57 11 just because those responsibilities exist on the part of a
09:41:00 12 pharmacy, those do not in any way diminish or negate the
09:41:04 13 responsibilities of the distributor with respect to monitoring
09:41:10 14 suspicious orders?

09:41:10 15 A. Regulations and the Controlled Substance Act provide for
09:41:14 16 different obligations on behalf of pharmacies and distributors.
09:41:25 17 CVS undertakes to comply with both sets of obligations.

09:41:33 18 Q. And one does not affect the other; correct?

09:41:35 19 A. I don't know that I would agree with that. A pharmacy
09:41:41 20 places orders for controlled substances that are shipped.
09:41:48 21 There can be any number of processes, procedures, safeguards in
09:41:56 22 place at the pharmacy that would result in the pharmacy not
09:42:00 23 placing orders that would be identified by a distributor as
09:42:08 24 suspicious.

09:42:09 25 Q. Is it the position of the CVS defendants that because they

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09:42:15 1 had pharmacy policies in place that their responsibility to
09:42:20 2 monitor suspicious orders was less?

09:42:25 3 A. There was no less an obligation to monitor suspicious
09:42:31 4 orders.

09:42:31 5 Q. The responsibility is not less; correct?

09:42:33 6 A. It is relevant to the concept of knowing your customer, and
09:42:38 7 in the case of CVS pharmacies, CVS pharmacies had in place
09:42:44 8 policies and procedures requiring pharmacists to follow the
09:42:50 9 law, including corresponding responsibility.

09:42:56 10 There was also a system of field supervision of those
09:42:58 11 pharmacies, a system of loss prevention supervision of those
09:43:03 12 pharmacies, and other considerations that would be relevant to
09:43:09 13 understanding who you were shipping the -- your shipments to.

09:43:13 14 So is it relevant to the obligation of suspicious
09:43:20 15 order monitoring, we would say it is. It does not mean that
09:43:26 16 the regulation doesn't say what the regulation says or that the
09:43:29 17 regulation doesn't apply to CVS distributors as a registrant.

09:43:34 18 Q. Showing you Exhibit 65. Have you seen this before?

09:43:38 19 A. Allow me to just take a minute to review.

09:43:41 20 Q. The title of this document is "CVS Distribution Center
09:43:44 21 Controlled Drug DEA Standard Operating Procedures Manual";
09:43:47 22 correct?

09:43:51 23 A. I'm sorry. I was still leafing through the back of the
09:43:57 24 document. I'm not done reviewing it, but I can answer your
09:43:58 25 questions about the title.

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09:43:59 1 Q. Right. That's the title of this document; correct?

09:44:03 2 A. That is the title of the document.

09:44:06 3 Q. And if you'll go down -- this was -- this was written
09:44:12 4 either by or in behalf of the CVS distributors; correct?

09:44:18 5 Is that correct?

09:44:21 6 A. To the best of my corporate knowledge, that's correct.

09:44:24 7 Q. Let me ask you this: This is a document -- do you know who
09:44:28 8 made this document?

09:44:29 9 That would be CVS Pharmacy created it or paid to get
09:44:33 10 this document created, CVS Pharmacy, they would have done this;
09:44:37 11 right? Is that true?

09:44:40 12 A. To the best of my corporate knowledge, this document would
09:44:45 13 have been put together by individuals working for CVS Pharmacy
09:44:58 14 in connection with the distribution center entities.

09:45:02 15 Q. All right. And if we go down to that fifth paragraph, does
09:45:06 16 it state that "CVS is responsible for ensuring compliance with
09:45:10 17 DEA regulatory requirements and that responsibility cannot be
09:45:17 18 abdicated or transferred to anyone else."

09:45:20 19 Are those the words of CVS Pharmacy, Inc.?

09:45:24 20 A. Those are the words that are here in this document.

09:45:28 21 Q. Okay. Let's look at -- let's look at what CVS -- the CVS
09:45:35 22 defendants did and CVS Pharmacy, Inc., did to fulfill their
09:45:39 23 duties with respect to the distribution of hydrocodone drugs;
09:45:44 24 all right?

09:45:44 25 January of '06, by January of '06 the Controlled

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09:45:50 1 Substance Act is -- has been in place for over 30 years. True?

09:45:56 2 A. To the best of my recollection, that's correct.

09:46:00 3 Q. I want to know what policies and procedures did CVS Indiana
09:46:05 4 have in place and functioning to monitor suspicious orders of
09:46:11 5 controlled substances that it was distributing in January of
09:46:18 6 '06.

09:46:18 7 A. Just as a -- a little bit of context here may be -- may be
09:46:23 8 helpful to your understanding.

09:46:26 9 The CVS Indiana warehouse facility is a large facility
09:46:30 10 that ships to CVS stores. It ships not just drugs, but also
09:46:40 11 front store items or what we call anything from paper towels to
09:46:47 12 anything that you would see in the front of the store. Within
09:46:49 13 the warehouse there is a section dedicated to what we would
09:46:56 14 call "pharmacy items."

09:46:58 15 Within that section containing pharmacy items there's
09:47:05 16 a subsection that contains controlled substances. Those
09:47:10 17 controlled substances are put in what's called a cage with
09:47:17 18 restricted access to only certain individuals. When CVS
09:47:24 19 Indiana would have received an order for a controlled
09:47:29 20 substance, that controlled substance order would have gone to
09:47:33 21 individuals who work within the controlled substances cage. We
09:47:39 22 sometimes refer to them as the pickers and packers because
09:47:41 23 they're the folks who actually pick the drugs, place them in
09:47:49 24 secured totes and see to it that those then are transferred for
09:47:56 25 loading on trucks.

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09:47:59 1 It has always been practice of the pickers and the
09:48:05 2 packers, it has always been the understanding of the pickers
09:48:11 3 and packers within that controlled drug cage to be aware of
09:48:21 4 unusual orders and when they were to identify an unusual order,
09:48:30 5 to escalate that for further review. The pickers and the
09:48:35 6 packers have experience picking those controlled substances and
09:48:41 7 have experience picking the controlled substances for those
09:48:48 8 stores.

09:48:51 9 Q. Have you finished your answer?

09:48:54 10 A. I believe so.

09:48:54 11 Q. That's what was in place in January of '06?

09:48:59 12 A. There were also a number of systems that would have
09:49:12 13 complemented that practice that were based in the field, not
09:49:15 14 the least of which is a set of field supervisors over CVS
09:49:23 15 Pharmacy stores --

09:49:24 16 Q. I'm not talking about --

09:49:25 17 A. -- the least of which is loss prevention personnel with
09:49:34 18 specific duties to investigate diversion. There were hundreds
09:49:42 19 of pharmacy supervisors and approximately 150 loss prevention
09:49:51 20 personnel.

09:49:52 21 The loss prevention organization also would run data
09:50:00 22 analysis that would look for certain indicators of diversion
09:50:10 23 with respect to store ordering practices. For instance, the
09:50:17 24 report would look at what we would deem pharmacy growth, which
09:50:24 25 is a store that may be ordering more controlled substances than

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09:50:31 1 it was dispensing. And that report verified over time in form
09:50:36 2 and substance, but would have included other potential indicia
09:50:45 3 of diversion that might prompt a field loss prevention officer
09:50:59 4 to conduct at the store level.

09:51:02 5 Q. What was this report called?

09:51:03 6 A. The PDMR report. It may have changed names to some degrees
09:51:08 7 over the course of time, but that report was in place, to the
09:51:11 8 best of my corporate knowledge, in 2006.

09:51:13 9 Q. And tell me the data information on the PDMR report.

09:51:19 10 A. It would include orders. To the best of my recollection,
09:51:26 11 it would include orders from warehouses and outside vendors.
09:51:32 12 It would include information about a store's dispensing. It
09:51:34 13 may include information about instances in which a store would
09:51:42 14 have manually adjusted the suggested order through the AIMS
09:51:48 15 system, and it may have included, and I believe did include,
09:51:52 16 information where a store may have adjusted it's inventory
09:52:04 17 level in the computer system to reflect a different inventory
09:52:07 18 level than the computer system -- than the computer system had
09:52:16 19 on record.

09:52:16 20 Q. Was the PDMR report reviewed prior to every single order
09:52:19 21 being placed for a hydrocodone drug in 2006?

09:52:24 22 A. It was not.

09:52:28 23 Q. Did the PDMR report provide an evaluation of whether or not
09:52:32 24 a specific order for a CVS Pharmacy for a hydrocodone product,
09:52:36 25 whether or not that was of unusual size for a specific order?

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09:52:52 1 A. It could potentially. It looked at orders in the -- in the
09:52:57 2 aggregate to determine whether or not that store, among other
09:53:01 3 things, was receiving more than it was dispensing.

09:53:08 4 Q. Did it evaluate specific orders for hydrocodone products in
09:53:15 5 2006 with respect to whether or not it was unusual in size in
09:53:21 6 relation to other orders placed by that pharmacy?

09:53:25 7 A. Yeah, it -- as I said, it contained information about
09:53:30 8 orders that could be evaluated by loss prevention personnel to
09:53:37 9 determine whether or not there should be an investigation
09:53:45 10 undertaken with respect to the orders that were reflected on
09:53:49 11 that report.

09:53:50 12 Q. Are you talking about the VIPER reports? Is that what
09:53:54 13 you -- is that what this PDMR is?

09:53:56 14 A. It would come out of the VIPER system, that's correct.

09:53:58 15 Q. But the report itself did not analyze any specific order to
09:54:02 16 determine whether or not that order was unusual in size;
09:54:04 17 correct? We've all looked at the form.

09:54:07 18 A. The company did not consider the results that populated on
09:54:15 19 that report to be per se unusual in size. It was a tool that
09:54:19 20 was available to loss prevention personnel in determining
09:54:22 21 whether or not further investigation by loss prevention
09:54:26 22 personnel would be appropriate.

09:54:27 23 Q. That report doesn't even identify a specific single order;
09:54:32 24 correct? Doesn't even identify a specific order.

09:54:40 25 A. I don't recall whether specific orders are listed in the

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09:54:47 1 report or whether it's an aggregate number at this point in
09:54:52 2 time.

09:54:54 3 Q. Well, if you're saying that report is part of a suspicious
09:54:59 4 order monitoring program, isn't that something you should know?

09:55:02 5 A. I don't think I said that that was our suspicious order
09:55:04 6 monitoring system, I said that it is a complementary to what
09:55:11 7 was occurring in our distribution centers and indeed the
09:55:17 8 metrics that would -- some of the metrics it looked at in that
09:55:21 9 report are consistent with some of the metrics that we look at
09:55:26 10 in our algorithms that we run.

09:55:29 11 Q. And in your opinion on Exhibit 93, PDMR report, able to
09:55:36 12 show me the evaluation of a single specific order for size?

09:55:39 13 Are you able to do that? You are not.

09:55:42 14 A. Based on the information I have in front of me I'm not.

09:55:44 15 Q. Thank you.

09:55:45 16 This report, the PDMR report, can you show the jury
09:55:49 17 anywhere on this report where the frequency of orders for
09:55:57 18 controlled substances is being evaluated, anywhere in this
09:56:00 19 report? Can you show us that?

09:56:01 20 A. Based on my corporate knowledge at this point in time I
09:56:03 21 cannot.

09:56:03 22 Q. Can you show us anywhere on this report, the PDMR,
09:56:11 23 Exhibit 93, where an evaluation is done of a specific order as
09:56:13 24 it relates to the pattern of ordering of a controlled
09:56:19 25 substance?

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09:56:19 1 A. Among the things that we consider in analysis of pattern is
09:56:29 2 whether or not the -- a particular store is ordering in more
09:56:34 3 than it's dispensing. That remains part of the algorithms that
09:56:39 4 we run today. That is reflected in this report. It's, in
09:56:44 5 fact, the point of this report, so, to some degree this report
09:56:50 6 could be used to look at pattern.

09:56:56 7 But, again, as I testified, this report was not what
09:56:59 8 we deemed a suspicious order monitoring report. It's relevant
09:57:04 9 to orders and order size and some degree order of pattern, but
09:57:12 10 the point of this was not to produce results for the purposes
09:57:15 11 of determining whether suspicious orders were made and
09:57:19 12 reporting those to the DEA.

09:57:20 13 Q. You talked about the pickers and the packers. Is it your
09:57:25 14 testimony that the pickers and the packers were responsible for
09:57:30 15 evaluating orders to determine whether or not they are
09:57:33 16 suspicious?

09:57:35 17 A. The pickers and the packers would be aware of, as part of
09:57:45 18 their job responsibilities, to raise any orders that they
09:57:49 19 considered to be irregular based on their knowledge and
09:57:55 20 experience and to escalate those within the chain of command
09:58:06 21 within the warehouse and could involve a consultation with
09:58:14 22 field personnel. Most commonly, to my corporate knowledge,
09:58:21 23 that would be a phone call to the pharmacy.

09:58:23 24 There were fairly -- there were a number of instances
09:58:35 25 where I understand the pickers and the packers would identify

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09:58:40 1 orders and initiate contact through supervisors to the store in
09:58:50 2 order to determine whether that order was one that the store
09:58:58 3 made by mistake, for instance.

09:59:02 4 Q. Tell me this, what database, what information and knowledge
09:59:06 5 did a picker and a packer have in January of '06 to determine
09:59:11 6 whether or not a specific order for a specific pharmacy was of
09:59:16 7 unusual size?

09:59:17 8 A. Their knowledge and experience of picking controlled orders
09:59:22 9 and exclusively controlled orders for many years for generally
09:59:31 10 speaking the same subset of stores. They would then escalate
09:59:36 11 those orders for further review, which would most often include
09:59:43 12 a phone call to the store and I -- and I can't tell you, you
09:59:48 13 know, what each of those conversations may have included or
09:59:55 14 what information may have been provided by the store.

10:00:00 15 Q. The -- let me ask you this: This pickers and the packers
10:00:09 16 and their just -- their general experience, is that what CVS
10:00:15 17 had in place as its system to disclose suspicious orders based
10:00:22 18 upon size, frequency, and pattern in '06?

10:00:27 19 A. To the best of my corporate knowledge at this point in
10:00:29 20 time, yes.

10:00:30 21 Q. From '06 to 2012, did a picker and a packer ever identify
10:00:36 22 an order that was stopped and determined to be suspicious and
10:00:38 23 reported to the DEA, ever?

10:00:41 24 A. To the best of my corporate knowledge at this point in
10:00:47 25 time, we do not have record of any suspicious order being

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10:00:54 1 identified or reported to the DEA in 2006 from the Indianapolis
10:01:04 2 distribution center.

10:01:05 3 Q. From January of '06 -- I want to talk about from January of
10:01:09 4 '06, because we've talked about January, from January of '06
10:01:12 5 until 12-1-07, when the first operating policy manual comes
10:01:16 6 into play, can you describe for me what suspicious order
10:01:22 7 monitoring policies and procedures were in place?

10:01:26 8 A. The practice and procedure that I described to you with
10:01:29 9 respect to the controlled substances cage, pickers and packers
10:01:36 10 was in effect and remained in effect.

10:01:40 11 There were a number of other safeguards and diversion
10:01:47 12 at various places within the company, but with respect to the
10:01:52 13 identification of suspicious orders for reporting to the DEA,
10:02:02 14 to the best of my corporate knowledge at this point in time,
10:02:04 15 that was the primary practice that was in place.

10:02:11 16 Q. Sir, you were shown Exhibit 6. Is the subject "New RX DEA
10:02:16 17 SOP"?

10:02:17 18 A. The subject of the e-mail at the bottom of the page is "New
10:02:22 19 RX DEA SOP."

10:02:24 20 Q. Now, on this date, November 27, 2007, Amy Lynn Brown
10:02:33 21 states, "Good afternoon, in late August we met to review a new
10:02:37 22 SOP."

10:02:38 23 SOP, we understand to mean standard operating
10:02:40 24 procedure. True?

10:02:43 25 A. I'm familiar with that terminology being used that way,

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10:02:46 1 yeah.

10:02:46 2 Q. And let me ask you this: Who was the company authorizing
10:02:49 3 the SOP at this point in time?

10:02:59 4 A. To the best of my corporate knowledge, the Buzzeo Group was
10:03:03 5 engaged in a consulting capacity and assisted in authoring this
10:03:14 6 document that's attached to the e-mail.

10:03:15 7 Q. Do you agree with her statement here, "We are still in the
10:03:19 8 process of writing the suspicious order monitoring section of
10:03:23 9 this standard operating procedure."

10:03:26 10 As of this date, do you agree that it was still being
10:03:29 11 written in November of 2007?

10:03:31 12 Do you agree with that statement?

10:03:34 13 A. To the best of my corporate knowledge, that is true.

10:03:38 14 Q. Exhibit 14, please.

10:03:40 15 We were just talking about December of '07, so I want
10:03:46 16 to move forward now to September of '08. So, ten months or so
10:03:53 17 later. This is an e-mail, that being Exhibit 14, from Richard
10:04:09 18 Sonate (phonetic), correct?

10:04:10 19 A. September 2008 from Richard Sonate, yep.

10:04:14 20 Q. The standard operating procedures for the suspicious
10:04:17 21 monitoring are still being drafted, and we are in September of
10:04:21 22 '08; correct?

10:04:22 23 A. To the best of my corporate knowledge that's true.

10:04:26 24 Q. Let's move forward now to April 3rd of '09. And that would
10:04:29 25 be Exhibit 7. All right?

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10:04:34 1 Looking at the bottom e-mail from Amy Propatier.

10:04:39 2 She's employed at CVS Pharmacy, Inc.; correct?

10:04:43 3 A. To the best of my knowledge that's true, yes.

10:04:46 4 Q. And she would have been involved with establishing the

10:04:49 5 suspicious order monitoring policy and that section of the

10:04:55 6 standard operating procedures. True?

10:04:55 7 A. To the best of my knowledge, Mrs. Propatier was involved in

10:05:02 8 the standard operating procedure.

10:05:03 9 Q. Now, it says, "Good morning, attached is the DEA SOP,

10:05:09 10 standard operating procedures, which was implemented in

10:05:12 11 December of 2007. We have made some recent updates to the SOP.

10:05:18 12 Please note we have updated the record retention period from

10:05:21 13 five years to two years.

10:05:23 14 "Also, the SOM, suspicious order monitoring section,

10:05:29 15 is still it not included in the SOP. In the event of an audit

10:05:34 16 and the question comes up, please direct them to corporate,

10:05:38 17 Frank or myself, for explanation of the program. Please review

10:05:42 18 with your teams and forward to anyone I have missed."

10:05:47 19 We agree at this point in time now, it's April of '09,

10:05:52 20 and the standard, or, excuse me, the suspicious order

10:05:55 21 monitoring section is still not included in the standard

10:06:00 22 operating procedures; correct?

10:06:03 23 A. The final version is not included in the standard operating

10:06:07 24 procedures being referenced by Mrs. Propatier in this e-mail.

10:06:12 25 Q. Exhibit 49, let's look at CVS's -- whether or not they have

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10:06:18 1 in procedures in place.

10:06:19 2 We have an e-mail dated 11-5-09.

10:06:24 3 Do you see that top e-mail? Do you see that? Does it

10:06:32 4 state November 5, 2009, an e-mail from Mr. Mortelliti; correct?

10:06:42 5 A. That appears to be the date of the e-mail. The subject of

10:06:46 6 the e-mail is November 10th, 2009.

10:06:48 7 Q. Who is Mr. Mortelliti?

10:06:51 8 A. Mr. Mortelliti was an individual within the CVS loss

10:07:00 9 prevention organization.

10:07:01 10 Q. CVS Pharmacy, Incorporated; correct?

10:07:05 11 A. To the best of my corporate knowledge that is correct.

10:07:08 12 Q. And did he have significant responsibility for the

10:07:11 13 creation, the implementation of the suspicious order monitoring

10:07:14 14 policies?

10:07:20 15 A. I believe Mr. Mortelliti had involvement in the

10:07:23 16 implementation of both the system that had been developed by

10:07:29 17 the Buzzeo Group as well as input perhaps, to the best of my

10:07:37 18 corporate knowledge, the policies.

10:07:40 19 Q. Mr. Mortelliti, now we're in November of '09, he writes,

10:07:44 20 "Sounds good. I am trying to get a rough draft of the

10:07:47 21 suspicious order monitoring standard operating procedure to you

10:07:53 22 prior to the meeting. This is a big issue with CVS and the

10:07:59 23 DEA."

10:08:05 24 Do you agree that drafting and having written

10:08:09 25 suspicious order monitoring, a policy written and drafted now

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10:08:21 1 in November of '09 was a big issue, not only for CVS, but also
10:08:25 2 for the DEA at that point in time?

10:08:26 3 Would you agree with that statement on behalf of CVS?

10:08:29 4 A. I don't know what Mr. Mortelliti's specifically addressing
10:08:39 5 here. The context of the e-mail is not clear to me --

10:08:42 6 Q. Let me go back and read it again.

10:08:43 7 A. -- with CVS's compliance with DEA regulations is something
10:08:48 8 that CVS takes seriously.

10:08:50 9 Q. In behalf of CVS, who you are here representing, would you
10:08:55 10 disagree that at this point in time the drafting of suspicious
10:09:02 11 order monitoring policies were a big issue for CVS and the DEA
10:09:06 12 at this point in time? It's now November of 2009.

10:09:10 13 A. In November of 2009, it's my understanding that CVS had the
10:09:17 14 Buzzeo algorithmic based system in place. This references
10:09:26 15 drafting the suspicious order monitoring SOP prior to a
10:09:34 16 meeting, the context of which is unclear from the face of the
10:09:38 17 e-mail.

10:09:38 18 I have not reviewed this e-mail in preparation for
10:09:42 19 this deposition, nor have I had an opportunity to speak with
10:09:47 20 Mr. Mortelliti about what he was communicating here, so,
10:09:50 21 unfortunately, I don't have corporate knowledge as to exactly
10:09:53 22 what that means.

10:09:55 23 Q. So summarize here, to catch up to where we're at, first
10:10:04 24 creation of standard operating procedures by CVS was 12-1-07.
10:10:10 25 This is an exhibit that we created. The first one we looked

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10:10:13 1 at, the first operating procedures with respect to suspicious
10:10:16 2 order monitoring had a paragraph that we read saying, being
10:10:22 3 developed and written, did it not?

10:10:23 4 A. I remember that language from the written policy that was
10:10:28 5 in draft form at that time.

10:10:30 6 Q. Two years later the written policy, intended to be the
10:10:34 7 single document to describe these policies, two years later,
10:10:38 8 same thing, being developed and written; correct?

10:10:40 9 We looked at that, did we not?

10:10:41 10 A. Again, with respect to the written document that we looked
10:10:46 11 at, I remember this language being included, I think as I
10:10:54 12 explained, there was a system.

10:10:57 13 Q. January of '10, we just looked at that document, said the
10:11:01 14 same thing, being developed and written; correct?

10:11:05 15 A. Again, I remember that language being included in that
10:11:11 16 written document that we looked at earlier. I could again look
10:11:15 17 at the document and confirm.

10:11:18 18 Q. So it's been over four years since the DEA wrote the first
10:11:23 19 letter, and by this point in time the DEA has written three
10:11:26 20 letters total, have they not, April of 2010, the DEA has
10:11:31 21 written three letters. True?

10:11:33 22 A. We have discussed three letters today that were apparently
10:11:42 23 written by the DEA that predated 4-30-2010.

10:11:51 24 Q. This is April 2010. Four months later things changed
10:12:00 25 quickly at CVS; correct? In August of 2010 things changed

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10:12:06 1 quickly for CVS with respect to its responsibility and creation
10:12:11 2 and implementation of a system to monitor suspicious orders.

10:12:18 3 A. Based on my corporate knowledge that I have developed in
10:12:22 4 preparation for this deposition, I can't say that that's
10:12:28 5 correct.

10:12:29 6 Q. Sir, you know and you understand very well that in August
10:12:35 7 of 2010 the DEA came knocking on CVS's door to do an inspection
10:12:44 8 and audit and to investigate; correct?

10:12:46 9 A. I believe that our distribution facilities had undergone a
10:12:52 10 number of audits throughout the course of many years. I am
10:13:00 11 aware of an audit that occurred in the Indianapolis
10:13:06 12 distribution center in approximately 2010 when suspicious order
10:13:18 13 monitoring was discussed with the company's personnel.

10:13:22 14 Q. The DEA came knocking to your distribution centers in 2010
10:13:28 15 to inspect and to audit and to investigate; correct?

10:13:31 16 We're going to go through what they did, but that's
10:13:33 17 when had they came.

10:13:34 18 A. My understanding was that it was an audit. To the best of
10:13:38 19 my knowledge, the Indianapolis distribution center had gone
10:13:42 20 through what are essentially routine audits on a cyclical basis
10:13:50 21 essentially every three years since CVS owned the facility.

10:13:53 22 Q. But this one was different. This presented a problem for
10:13:57 23 CVS in August 2010, correct, because they asked -- they asked
10:14:02 24 for your suspicious order monitoring policies; right?

10:14:07 25 They asked for them, and they didn't have them in

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10:14:09 1 place; correct?

10:14:11 2 A. I'm not sure I have a clear corporate knowledge on the
10:14:17 3 policies that may or may not have been provided to the DEA. At
10:14:26 4 that time I am aware that suspicious order monitoring was
10:14:28 5 discussed with the -- with the DEA and that the DEA made no
10:14:38 6 adverse findings with respect to the company's suspicious order
10:14:42 7 monitoring system.

10:14:45 8 Q. So the answer to my question is yes, they asked for your
10:14:47 9 policies in August of 0 -- 2010. They asked for them, do you
10:14:51 10 remember that?

10:14:51 11 A. I remember that there has been a -- there was a discussion
10:14:54 12 about suspicious order monitoring at that time.

10:14:57 13 Q. Maybe this will help you, sir.

10:15:00 14 A. Consistent with my recollection that policies were asked
10:15:04 15 for and/or provided. I don't believe I have more specific
10:15:09 16 recollection than that.

10:15:12 17 Q. 32, please.

10:15:19 18 32 looks like a memo with respect to the DEA
10:15:24 19 inspection in August of 2010. The memo is to Frank Devlin, and
10:15:33 20 Frank Devlin, tell us his position.

10:15:34 21 A. Mr. Devlin was a loss prevention -- one of loss prevention
10:15:48 22 personnel responsible for CVS distribution centers.

10:15:51 23 Q. And he worked for CVS Pharmacy, Inc., would that be true?

10:15:54 24 A. To the best of my understanding, that's true.

10:15:56 25 Q. And who's Terrence Dugger?

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10:16:09 1 A. To the best of my knowledge, Mr. Dugger was in loss
10:16:14 2 prevention at the Indianapolis distribution center.
10:16:14 3 Q. And it says, "Results of the inspection, the DEA
10:16:16 4 inspectors, Madeline Kuzma and Elizabeth Stewart, was on site
10:16:21 5 at the Indianapolis facility on Tuesday, August 24, 2010,
10:16:25 6 through Thursday, 26, 2010, and again on Tuesday, August 31,
10:16:32 7 2010, and Wednesday, September 1, 2010."

10:16:34 8 Did I read that correctly?

10:16:36 9 A. I believe you did.

10:16:38 10 Q. "Their purpose was to conduct a full inspection. Requested
10:16:43 11 information," you go on down, under requested information,
10:16:54 12 fourth bullet down is SOM SOP. The DEA requested the
10:17:04 13 suspicious order monitoring standard operating procedure of CVS
10:17:10 14 in August of 2010. True?

10:17:17 15 A. Under requested information SOM SOP appears in this
10:17:20 16 document.

10:17:21 17 Q. Let's see what CVS did when the DEA asked for their
10:17:25 18 policies.

10:17:26 19 Give me Exhibit 40, please.

10:17:28 20 Start at the bottom, because that's the first e-mail.
10:17:33 21 The bottom e-mail, Mr. Devlin, CVS Pharmacy, Inc., on
10:17:43 22 August 23, 2010, he's writing Mr. Mortelliti and Amy Propatier,
10:17:51 23 subject DEA SOP. And he says, "Good morning, John," and this
10:17:55 24 is -- this is while the audit's going on, "can you work with
10:18:01 25 Amy to get the PSE IRR and the controlled drug IRR inserted

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10:18:10 1 into our DEA standard operating procedure under suspicious
10:18:16 2 order monitoring? We promised this to the DEA by Wednesday."

10:18:22 3 Did I read that correct?

10:18:24 4 A. You did, although you mentioned that this was while the
10:18:27 5 audit was going on, and this e-mail is sent on August 23rd.
10:18:32 6 The notes of the inspection say that the inspection began on
10:18:35 7 August 24th, so I don't know that this was while the audit was
10:18:39 8 underway at the Indianapolis distribution center.

10:18:43 9 Q. Well, this says --

10:18:44 10 A. Mr. Devlin's e-mail was sent in response to a request from
10:18:48 11 the DEA in connection with its inspection of the Indianapolis
10:18:54 12 distribution center.

10:18:54 13 Q. Is it your testimony that just by pure coincidence they
10:19:01 14 promised to give the DEA the suspicious order monitoring
10:19:05 15 section and the SOP's by Wednesday, that has nothing to do with
10:19:10 16 the audit.

10:19:11 17 Is that your testimony? You think that was a
10:19:15 18 coincidence on this date?

10:19:16 19 A. I don't have corporate knowledge that it was associated
10:19:18 20 with the audit.

10:19:19 21 Q. So things must have been -- moved pretty fast, right?
10:19:23 22 Because a few days later Amy Propatier is sending an e-mail to
10:19:33 23 Annette Lamoureux, dated 8-26 -2010. She is attaching the DEA
10:19:39 24 suspicious -- or, excuse me, standard operating procedure dated
10:19:43 25 8-25-10.

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10:19:45 1 Is that true? Do you see those dates? Are those
10:19:50 2 dates correct?

10:19:50 3 A. The date of the e-mail?

10:19:50 4 Q. Yes.

10:19:50 5 A. Is 8-26-10.

10:19:53 6 Q. And she states, "Can you please post we added the
10:19:57 7 suspicious order monitoring?"

10:19:59 8 Do you see that, sir?

10:20:00 9 A. I see that in the e-mail.

10:20:02 10 Q. And this is the first time that the suspicious order
10:20:06 11 monitoring procedures have been added to the standard operating
10:20:12 12 procedures at CVS, August of 2010?

10:20:22 13 A. I'm sorry. I'm just going to take a moment to review this.

10:20:25 14 Q. We're going to go through it, sir, in detail.

10:20:27 15 A. To the best of my corporate knowledge at this point in time
10:20:30 16 it is consistent that this document reflects the first revision
10:20:39 17 to the prior draft that we were looking at before. I do not
10:20:47 18 know whether or not it was done in connection with the DEA
10:20:50 19 inspection.

10:20:51 20 Q. This idea that you don't understand this is related to the
10:20:54 21 DEA that was there for four days within a day of this. Let's
10:21:01 22 look at -- look at Exhibit 40. This is Mr. Mortelliti, again.
10:21:08 23 He's writing to agreeing Greg Brantley.

10:21:16 24 Do you know who he is?

10:21:17 25 A. I don't.

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10:21:18 1 Q. Copying Mr. Devlin who is involved with these procedures;
10:21:20 2 correct?

10:21:26 3 A. He would have been.

10:21:27 4 Q. And sent 8-25-2010, subject, drug control -- excuse me --
10:21:32 5 control drug IRR SOP; correct? And that's suspicious order
10:21:35 6 monitoring. True?

10:21:43 7 Is that true?

10:21:43 8 A. The IRR was a report that was generated in connection with
10:21:46 9 our suspicious order monitoring process during that time.

10:21:48 10 Q. And the attachment is -- this says, "Importance high";
10:21:52 11 right? It says it's high importance?

10:21:54 12 A. Yes.

10:21:55 13 Q. The audit's going on with the DEA, right, 8-25-2010. True?

10:22:03 14 A. That is correct, according to the notes from Mr. Dugger
10:22:10 15 that you showed me in Exhibit 32.

10:22:12 16 Q. This says, "Attachments controlled drug IRR draft 3 doc."
10:22:12 17 Do you see that?

10:22:19 18 A. I do.

10:22:21 19 Q. It says, "Greg, this needs to be implemented ASAP."

10:22:27 20 What's the big hurry on this date if it isn't the DEA,
10:22:30 21 sir? What's the big hurry? This is -- you've been drafting
10:22:33 22 this since 2007. It's now 2010. The DEA is there. They
10:22:44 23 incorporate this into the SOP's for the first time and he's
10:22:50 24 sending it out saying you need to implement this ASAP. Explain
10:22:55 25 to me, what's the hurry.

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10:22:57 1 A. I don't have corporate knowledge that would answer that
10:22:59 2 question.

10:23:00 3 Q. Before you I believe is Exhibit 31. Let's start at the
10:23:05 4 bottom so we can go in chronological order, these e-mails.

10:23:10 5 This is dated -- the first e-mail is from
10:23:13 6 Mr. Mortelliti; correct? The one on the bottom dated
10:23:20 7 September 1, 2010, 10:45 a.m. True?

10:23:23 8 A. I believe that's correct, yes.

10:23:24 9 Q. And he's sending it out to Dugger and Humphries, true?

10:23:29 10 A. That's correct.

10:23:35 11 Q. And the subject is "DEA speaking points."

10:23:37 12 Do you see that?

10:23:37 13 A. I do.

10:23:37 14 Q. The DEA is still inspecting, according to the e-mail memo
10:23:41 15 we saw, they were still incoming on 9-1-2010. True?

10:23:50 16 A. According to the memo of Exhibit 32, and the DEA was on
10:23:55 17 site in the Indianapolis distribution center on September 1st,
10:23:58 18 yes.

10:23:58 19 Q. This says, "Terrence, this is for the DEA. The corrections
10:24:06 20 listed below have been updated. It is okay to review this with
10:24:09 21 the agents."

10:24:09 22 And he's talking about DEA agents, is he not?

10:24:19 23 A. I don't know exactly what Mr. Mortelliti meant when he
10:24:20 24 wrote this e-mail, although that's sensible reading of the
10:24:24 25 e-mail.

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10:24:25 1 Q. He is -- Mr. Mortelliti is telling these two gentlemen
10:24:36 2 about a PowerPoint, about speaking points to the DEA with
10:24:38 3 respect to the suspicious order monitoring procedures, is he
10:24:41 4 not?

10:24:48 5 A. This appears to address speaking points that were put
10:24:50 6 together and Mr. Mortelliti indicates in the second e-mail for
10:25:02 7 the DEA agents if they come to your facilities.

10:25:03 8 Q. Sir, let's go to the second e-mail, up above,
10:25:06 9 Mr. Mortelliti, "John, this is 7 minutes later, September 1,
10:25:13 10 2010, now it's to a larger group of folks at CVS, subject, DEA
10:25:17 11 speaking points. Importance, high.

10:25:21 12 "Team, these are the final approved speaking points
10:25:28 13 for the DEA agents if they come to one of your facilities and
10:25:32 14 request suspicious monitoring."

10:25:39 15 He states next: "It is okay to share this document."
10:25:48 16 Look what he says next to these CVS folks that are going to be
10:25:51 17 interacting to the DEA. He says next, "Please be sure your
10:25:54 18 team understands it. It is -- understands it before
10:26:00 19 presenting."

10:26:01 20 He's telling them that because they don't know
10:26:03 21 anything about your suspicious order monitoring policies at
10:26:07 22 this point; correct?

10:26:09 23 He's saying, "Read it, understand it, before you
10:26:11 24 present it." Isn't that what he says?

10:26:15 25 Sir, is that what he says?

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10:26:16 1 A. Could you repeat your question?

10:26:17 2 Q. Does he say, "Please be sure your team understands it
10:26:21 3 before presenting?"

10:26:23 4 And he's talking about the PowerPoint on suspicious
10:26:27 5 monitoring. True? Is that true?

10:26:29 6 A. I don't know exactly what Mr. Mortelliti is referring to.
10:26:34 7 He seems to be referring to in this e-mail the PowerPoint that
10:26:41 8 he was attaching.

10:26:41 9 Q. He does not. So he says, please be sure your team
10:26:44 10 understands it before presenting so it doesn't look like a prop
10:26:50 11 instead of a tool." Is that what he says --

10:26:58 12 A. He does.

10:27:00 13 Q. -- he wants to make sure the suspicious order monitoring
10:27:04 14 policies look like a tool instead of a prop in the eyes of the
10:27:11 15 DEA; right? Is that what he says?

10:27:16 16 A. I do not have corporate knowledge that that's what
10:27:18 17 Mr. Mortelliti was saying. He says in this e-mail, which I
10:27:25 18 understand, "so it doesn't look like a prop" --

10:27:28 19 Q. Right.

10:27:28 20 A. -- "instead of a tool."

10:27:29 21 Q. Right. And a tool is something you use; right?

10:27:31 22 A. Right.

10:27:32 23 Q. And a prop is something make believe on the set of a play;
10:27:35 24 right? Is that right, sir?

10:27:37 25 A. I don't know if that's the way that Mr. Mortelliti was

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10:27:39 1 using the word there.

10:27:40 2 Q. Well, what do you think? Tool is something you use; right?

10:27:43 3 A. A tool can be something you use.

10:27:44 4 Q. A prop is something that's kind of make believe that's on
10:27:47 5 the stage of a play, right? Isn't that a common understanding?

10:27:50 6 A. I'm familiar with that usage of the word.

10:27:54 7 Q. And if Mr. Mortelliti wants the people at the distribution
10:27:57 8 centers to create the impression that these policies are
10:28:03 9 actually a tool instead of a prop, he's asking these folks to
10:28:10 10 mislead the DEA; correct?

10:28:12 11 A. I don't have knowledge that that's the case.

10:28:15 12 Q. They've never seen or used these policies before. They're
10:28:18 13 not a tool. They've never been used; right? They've never
10:28:21 14 been used at this point in time, sir, these policies have never
10:28:25 15 been used. True?

10:28:27 16 A. That's inconsistent with my understanding of the process
10:28:31 17 that was in place. Mr. Mortelliti had been reviewing and
10:28:34 18 conducting due diligence on potentially suspicious orders at
10:28:43 19 this point in time for, as I understand it, more than a year.

10:28:44 20 If you look at what was marked as Exhibit 9 -- sir, I
10:28:50 21 need to refer to this document in order to answer your question
10:28:53 22 because this document speaks to the process of reviewing the
10:28:59 23 IRR report, moving in September of 2010 from being centrally
10:28:59 24 reviewed in the Lumberton distribution center.

10:28:59 25 Q. This is --

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10:29:10 1 A. As I understand it, in the document we looked at in
10:29:12 2 Exhibit 9, a review the IRR report being moved from primarily
10:29:21 3 performed of the central location in New Jersey. And then it
10:29:25 4 says, "During the month of September 2010 the report will be
10:29:28 5 transitioned to each pharmacy DC and the following procedures
10:29:34 6 will apply."

10:29:34 7 The procedures that I understand Mr. Mortelliti to
10:29:39 8 have sent out in -- at the end of August were procedures to be
10:29:42 9 followed by the individual personnel who were performing those
10:29:49 10 reviews in or around that time in the individual DC's. Prior
10:29:57 11 to that time Mr. Mortelliti had been conducting that review
10:30:00 12 himself at the Lumberton distribution center.

10:30:04 13 Q. Let's look now -- now, let's look at the PowerPoint that
10:30:08 14 was given to folks at the distribution center for their
10:30:17 15 representations to the DEA. All right? It's Exhibit 31. It's
10:30:23 16 titled "Suspicious Order Monitoring For PSE/Controlled Drugs,"
10:30:26 17 and it's dated August 27, 2010; correct?

10:30:29 18 A. Yes. I understand from talking to Mr. Mortelliti that this
10:30:32 19 was a document that he put together for the purposes of
10:30:35 20 training personnel in the individual distribution centers to in
10:30:39 21 some capacity take over some of the responsibilities that he
10:30:42 22 had been performing at the Lumberton distribution center.

10:30:44 23 Q. And I would -- August 25, 2010. Would this be the first
10:30:49 24 time that the effective, actually in-place standard operating
10:31:00 25 procedures would have had an operable in effect section on

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10:31:05 1 suspicious order monitoring?

10:31:07 2 A. As I said, the process for reviewing suspicious order
10:31:12 3 monitoring -- or, excuse me -- the suspicious order monitoring
10:31:16 4 process was in place prior to this document. Based on my
10:31:23 5 corporate understanding -- corporate knowledge, it is my
10:31:25 6 understanding that this document reflects the first time in
10:31:29 7 which the draft component of the written document that speaks
10:31:37 8 to suspicious order monitoring was taken out of draft form.

10:31:44 9 Q. All right. And let me ask you again. I want you to listen
10:31:47 10 to my question very carefully if you would, please. I'm not
10:31:50 11 asking you what's in place, what isn't in place. I'm very
10:31:52 12 simply asking: The standard operating procedures dated 8-25-10,
10:31:58 13 would this be the first time that the standard operating
10:32:02 14 procedures have in place the suspicious order monitoring
10:32:08 15 procedures that are actually being utilized?

10:32:14 16 A. It was the company's procedure to review the IRR reports
10:32:21 17 prior to this time. This is the first time that the written
10:32:30 18 policy and procedure to my knowledge was updated to reflect
10:32:30 19 that process.

10:32:33 20 Q. And the IRR report, that is the report that would provide a
10:32:37 21 scoring with respect to an order for a controlled substance;
10:32:42 22 correct?

10:32:45 23 A. The IRR report was generated based on a number of
10:32:52 24 algorithms and would eventually combine some of those factors
10:32:55 25 and attributes to produce a score. That item would then be

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10:33:03 1 subject to manual review, consulting additional resources as
10:33:08 2 appropriate.

10:33:10 3 Q. So the IRR report -- that's all I want to talk about at
10:33:14 4 this point. We'll go step by step. The IRR report, then,
10:33:19 5 reflects the evaluation and the scoring of a specific order for
10:33:23 6 a controlled substance; right?

10:33:25 7 A. The IRR report would include specific orders of controlled
10:33:33 8 substance that met the criteria for conclusion on the report.

10:33:36 9 Q. The IRR report then, again, what makes the IRR report is
10:33:39 10 something that's being flagged for some reason is passed
10:33:45 11 through the algorithms. It appears that this is an order that
10:33:48 12 might potentially be suspicious, so now it appears in the IRR
10:33:59 13 report; is that correct?

10:33:59 14 A. That sounds consistent with my understanding.

10:34:01 15 Q. If we go to the item review report, Paragraph 4, it states,
10:34:12 16 "Currently the item review report, IRR, for controlled drugs is
10:34:12 17 being reviewed in a central location in New Jersey."

10:34:15 18 Is that what it states?

10:34:16 19 A. It does.

10:34:22 20 Q. Where in New Jersey?

10:34:23 21 A. My understanding is the Lumberton, New Jersey distribution
10:34:27 22 center where Mr. Mortelliti was based.

10:34:29 23 Q. And can you tell me unwritten policies and procedures, what
10:34:33 24 were in place with respect to the required due diligence review
10:34:38 25 of a flagged order on the IRR from '09 to early '10?

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10:34:45 1 A. I understand that Mr. Mortelliti's practice would have been
10:34:47 2 to review the report on a daily basis and to determine whether
10:34:56 3 items on the report warranted further review and due diligence
10:35:03 4 and conduct that review and due diligence as he deemed
10:35:07 5 appropriate.

10:35:08 6 Q. Was Mr. Mortelliti stopping orders that were flagged in the
10:35:12 7 IRR prior to the due diligence in '09 into '10?

10:35:18 8 A. From what I understand, based on my discussions with
10:35:21 9 Mr. Mortelliti, if he had an order that he was conducting
10:35:30 10 further due diligence on and had not yet reached a conclusion
10:35:34 11 that it wasn't suspicious, he would call or e-mail, typically
10:35:43 12 call, the distribution center in order to have that order held
10:35:48 13 while the further due diligence was being conducted, and after
10:35:56 14 making a determination that the order was not suspicious, tell
10:36:00 15 the distribution center that they could release the order.

10:36:04 16 Q. In '09 and '10, did Mr. Mortelliti or any -- anyone at CVS,
10:36:14 17 identify, stop and report to the DEA a suspicious order at any
10:36:19 18 time?

10:36:19 19 A. I'm not aware during that time period that Mr. Mortelliti
10:36:26 20 identified any orders that were deemed suspicious and reported
10:36:30 21 to the DEA.

10:36:35 22 MR. LANIER: Your Honor, that concludes the offer from
10:36:37 23 the lawyer -- in-house lawyer Mark Vernazza.

10:36:45 24 Our next witness is via live video hook-up. He is in
10:36:49 25 Dallas to testify where part of our team is as well and we need

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10:36:54 1 probably the time to test --

10:36:57 2 THE COURT: We'll take -- five. We'll take our
10:37:00 3 midmorning break, ladies and gentlemen. 15 minutes, usual
10:37:04 4 admonitions and then we'll pick up with the next witness by
10:37:07 5 video.

10:37:17 6 (Jury excused from courtroom)

10:50:06 7 (Recess was taken from 10:37 a.m. till 10:53 a.m.)

10:54:35 8 (Jury returned to courtroom at 10:54 a.m.)

10:54:35 9 THE COURT: Okay. Please be seated, ladies and
10:54:37 10 gentlemen.

10:54:37 11 Mr. Lanier, you may proceed.

10:54:39 12 MR. LANIER: Thank you, Your Honor.

10:54:40 13 We are calling Mr. Brad Nelson back to the stand.

10:54:46 14 Mr. Nelson testified by deposition in I believe the first week
10:54:52 15 of trial. He is in Dallas, Texas, right now at his lawyer's
10:54:56 16 office, and we see him on the video hook-up.

10:55:01 17 And, Your Honor, we are ready to go when you are.

10:55:06 18 THE COURT: Okay. All set.

10:55:15 19 MR. LANIER: We do not have a court reporter there,
10:55:17 20 Your Honor, so you'll need to administer the oath from here.

10:55:19 21 THE COURT: Oh, right. Thank you.

10:55:21 22 All right. Good morning, Mr. Nelson.

10:55:25 23 Can you hear me all right? Can you hear me okay?

10:55:28 24 THE WITNESS: Yes, sir.

10:55:29 25 THE COURT: Okay. If you could raise your right hand,

Nelson (Cross by Lanier)

10:55:31 1 sir.

10:55:32 2 Do you swear or affirm that the testimony you are
10:55:35 3 about to give will be the truth, the whole truth, and nothing
10:55:37 4 but the truth under pain and penalty of perjury?

10:55:41 5 THE WITNESS: I do.

10:55:42 6 THE COURT: Thank you very much.

10:55:42 7 CROSS-EXAMINATION OF BRAD NELSON

10:55:46 8 BY MR. LANIER:

10:55:46 9 Q. Mr. Nelson, I assume you don't -- are you -- you're not
10:55:51 10 able to see me, are you?

10:55:54 11 A. There's a small window, sir, where I can see you in the
10:55:57 12 video screen in the right.

10:55:58 13 Q. Okay. Good. I didn't know if you'd be able to see me or
10:56:02 14 not.

10:56:02 15 I met you once before. My name is Mark Lanier. I
10:56:07 16 think the video screen is in part this, but I took your
10:56:09 17 deposition in this case; is that right?

10:56:13 18 A. That is correct.

10:56:14 19 Q. And I see you've got Ms. Knight next to you,
10:56:18 20 Camille Knight. She is your lawyer, and you are with her there
10:56:20 21 in her Dallas office today; is that correct?

10:56:24 22 A. That is correct.

10:56:25 23 Q. All right. Well, thank you for taking time out. I know
10:56:27 24 that you've got a limited amount of time today. I've got a
10:56:30 25 very short road for you. My goal is to spend no more than

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10:56:35 1 two hours with you. The road is what I've called reminders and
10:56:43 2 then what I'm calling policies and actions.

10:56:45 3 Do you see that, sir?

10:56:47 4 A. I do.

10:56:48 5 Q. Okay. And the reminders is just to help the jury remember
10:56:51 6 over the course of three or four weeks now they've heard a lot
10:56:55 7 of different witnesses, and they need to remember who you are
10:56:57 8 to help plug in to what you've already said so I don't need to
10:57:01 9 walk back through it all.

10:57:02 10 Does that make sense?

10:57:04 11 A. I understand.

10:57:05 12 Q. And then do you also understand that just in the last
10:57:08 13 couple of weeks, certainly since your deposition I should say,
10:57:12 14 we've gotten some more documents that have your name on them
10:57:16 15 and that is why the Court has entitled me to put you back on
10:57:19 16 the stand to ask you questions that those documents have called
10:57:24 17 forth.

10:57:25 18 Does that make sense?

10:57:28 19 A. That's the way I understand it.

10:57:29 20 Q. And I'm not suggesting to you or the jury or to anybody
10:57:32 21 that His Honor certainly not, that you had done anything remiss
10:57:37 22 in our receiving those documents after your deposition. I
10:57:43 23 don't think you were the one in control of giving us the
10:57:45 24 documents. Is that fair to say?

10:57:47 25 A. That would be accurate.

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10:57:51 1 Q. All right. So what I've done is I've taken the notes that
10:57:54 2 you and I made -- well, I made the notes -- in the deposition.
10:58:00 3 They've been edited slightly to reflect what we played in
10:58:04 4 court, but I want to make sure as part of the reminders that we
10:58:07 5 just remember who you are and the points that we covered the
10:58:10 6 first time you gave your testimony in this case. All right?

10:58:17 7 A. Yes.

10:58:17 8 Q. So this is one of those sheets that we made. Your Walmart
10:58:24 9 career, you made the point in your deposition your professional
10:58:27 10 life was more than your Walmart career, but your Walmart career
10:58:31 11 was from 1983 through 2017.

10:58:36 12 Is that still who you are?

10:58:40 13 A. That is correct.

10:58:44 14 Q. All right. And then we talked about your job at Walmart.
10:58:45 15 And you had different jobs over the year -- over the years
10:58:52 16 plural, but I focus with you as your job as the senior manager
10:58:59 17 for controlled substances for regulatory affairs.

10:59:04 18 Do you remember that?

10:59:04 19 A. That is one of the jobs I held.

10:59:06 20 Q. And in that regard I talked to you a lot. In fact, I tried
10:59:09 21 to keep the exhibit that we used in your deposition about your
10:59:14 22 application for that job.

10:59:20 23 Do you recall those discussions we had?

10:59:21 24 A. We had many discussions about the application process.

10:59:24 25 Q. We did. I went over it probably till you were having

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10:59:28 1 nightmares afterwards for weeks.

10:59:31 2 But my big question to you was whether or not you were
10:59:34 3 set up to fail because of your qualifications. And I don't
10:59:38 4 mean to insinuate that you have failed, but I just question
10:59:43 5 whether or not the job as set out by Walmart was one that you
10:59:46 6 were the best fit for.

10:59:48 7 Do you remember those discussions?

10:59:50 8 A. I remember those questions, yes.

10:59:52 9 Q. And that's why we looked at what has been marked as
10:59:58 10 Plaintiffs' Exhibit 7174, and it was your job detail for the
11:00:08 11 job you applied for and ultimately won.

11:00:09 12 Do you remember that?

11:00:13 13 A. I do remember that document.

11:00:14 14 Q. And I've got Ms. Fleming passing it out to the opposing
11:00:24 15 counsel, so just bear with me for one moment while they get a
11:00:26 16 copy of it.

11:00:29 17 Thank you, Maria.

11:00:31 18 And in that, for the job requirements -- by the way,
11:00:35 19 you didn't write these job requirements, did you?

11:00:39 20 A. No, sir.

11:00:40 21 Q. This was done by the company and you just applied for the
11:00:45 22 job; right?

11:00:47 23 A. I applied for the job, but I do not know who wrote that.

11:00:53 24 Q. So the minimum qualifications by the company we're almost
11:00:56 25 through reviewing here, but it did not require that you had any

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11:01:00 1 DEA training. True?

11:01:03 2 A. I don't see that listed, sir.

11:01:06 3 Q. Right. And they didn't list here any kind of legal
11:01:10 4 training that you needed as well, did they?

11:01:13 5 A. No, I don't see that listed either.

11:01:15 6 Q. So you were put in charge of, in essence, a legal
11:01:20 7 compliance in part without legal training and DEA training.

11:01:25 8 Is that fair to say?

11:01:28 9 MR. MAJORAS: Objection.

11:01:29 10 THE COURT: Overruled.

11:01:33 11 THE WITNESS: I don't know if I was put in charge of
11:01:35 12 that. It was part of my responsibility.

11:01:38 13 BY MR. LANIER:

11:01:38 14 Q. And -- okay. That's fair. That's fair. That's fair.

11:01:43 15 I also -- in the process we talked -- we kind of put a
11:01:51 16 timeline together that I may go back and reference shortly, but
11:01:54 17 we looked at some of the requirements under the law that fell
11:01:57 18 under your umbrella of responsibility.

11:02:01 19 Do you remember that?

11:02:05 20 A. We talked about many requirements.

11:02:06 21 Q. Yes, sir. Exactly. We talked about the legal requirement
11:02:11 22 for corresponding responsibility. We talked about professional
11:02:16 23 practice, and we talked about effective controls and
11:02:23 24 procedures, both with the federal government and with Ohio
11:02:26 25 regulations.

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11:02:26 1 You remember all of that?

11:02:28 2 A. I do remember some of that, yes, sir.

11:02:29 3 Q. Okay. Thank you, sir.

11:02:31 4 And with that stroll down reminder lane, I next want

11:02:37 5 to just talk about policies and actions. And I think these

11:02:42 6 documents that I'm showing you are all new documents that I did

11:02:46 7 not have at the time of your deposition, but they do echo a

11:02:54 8 theme of other documents that we looked at. Okay?

11:02:59 9 A. Okay.

11:03:01 10 Q. In the timeline that we were working on, if I put it back

11:03:11 11 up, you were taking your new job and by January of 2013 you

11:03:19 12 were in that new job. Is that fair to say?

11:03:24 13 A. I was in that new job in January of 2011.

11:03:28 14 Q. Okay. So you had already been in that job -- oh, that's

11:03:34 15 why we had -- you had already been e-mailing about the CVS

11:03:37 16 problems on red flags; correct?

11:03:43 17 A. Certainly we had some e-mails sent during the first

11:03:46 18 three years -- the first two years of my job, yes.

11:03:48 19 Q. And you were there when the *Holiday* decision came out in

11:03:52 20 the federal register; right?

11:03:55 21 A. Yes. You reminded me it was called the *Holiday*.

11:03:58 22 Q. And that was something that was notable, I mean, that was

11:04:01 23 something that brought to your attention certain obligations if

11:04:09 24 you didn't already know them; right?

11:04:12 25 A. Is certainly brought up information that happened to that

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11:04:15 1 pharmacy or that chain.

11:04:16 2 Q. And then in the timeline of your deposition, I had as
11:04:22 3 March 26th, 2013, this first quotation that "No blanket
11:04:27 4 refusals are allowed by boards of pharmacy."

11:04:31 5 Do you remember that?

11:04:34 6 A. I don't know what the date is about, but that information
11:04:37 7 was consistent with Walmart policy from the time I took the job
11:04:40 8 to that point.

11:04:40 9 Q. Yes. And that's the key that I want to emphasize, what you
11:04:45 10 are here doing is expressing Walmart policy; is that right?

11:04:54 11 A. I'm speaking about the policy that was in place when I was
11:04:56 12 in that role.

11:04:58 13 Q. Right. And that's a Walmart policy that was in place;
11:05:02 14 correct?

11:05:03 15 A. That is correct.

11:05:05 16 Q. Your job was to see that the company's policies were taught
11:05:11 17 and carried out. Is that fair?

11:05:16 18 A. Yeah, my responsibility in the process of policy was
11:05:19 19 communication and training.

11:05:20 20 Q. In other words, the policies would be set by Walmart, you
11:05:25 21 were in charge of training people to make sure they followed
11:05:28 22 those policies and communicating those policies to the people.
11:05:32 23 Fair?

11:05:34 24 A. My job was to communicate the policies and train them about
11:05:37 25 the policies. It was not to enforce that they were followed.

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11:05:41 1 Q. Got it. Thank you.

11:05:44 2 Now, in that regard, you'll recall in your deposition
11:05:51 3 I kept going back to the way you would cut and paste the same
11:06:01 4 policy language into so many of your replies when people would
11:06:07 5 question you about how to do things. Remember?

11:06:09 6 A. Yes, sir, but I also want to remind you that it was not
11:06:12 7 just me sending out that information, my colleagues were also
11:06:16 8 sending that same information.

11:06:17 9 Q. Right. You had two people that worked with you in that
11:06:20 10 section; is that right?

11:06:24 11 A. We both had -- all three of us had the same job
11:06:29 12 responsibilities, yes, sir. They didn't work with me, they had
11:06:31 13 the same -- a different geographical remember.

11:06:34 14 Q. But again -- I apologize. I've got to be very careful not
11:06:37 15 to interrupt you, especially on video because it will mess
11:06:40 16 everything up and you won't know it. So I'll be careful to
11:06:44 17 listen better.

11:06:44 18 But again, all three of you wore, I won't say the same
11:06:50 19 handcuffs, but all three of your hands were tied --

11:06:53 20 MR. MAJORAS: Objection, Your Honor.

11:06:54 21 Q. -- about whatever Walmart policy was.

11:06:56 22 THE COURT: Yeah. Sustained. Sustained.

11:06:58 23 BY MR. LANIER:

11:06:58 24 Q. Okay. All three of you had to follow Walmart policy,
11:07:00 25 didn't you?

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11:07:01 1 A. Yes, sir.

11:07:02 2 Q. Okay. So when you say they were in the same job as you,
11:07:06 3 they're also following Walmart policy, they're also training
11:07:10 4 others in how to follow that policy; is that right?

11:07:15 5 A. I can't speak for the actual performance, but that is what
11:07:20 6 we were instructed to do, yes.

11:07:21 7 Q. Okay. In that regard, sir, Walmart had a policy of not
11:07:28 8 allowing a blanket refusal to fill at this time; right?

11:07:34 9 A. That is the information that was being communicated at that
11:07:37 10 time.

11:07:37 11 Q. And you were told that that's because the boards of
11:07:41 12 pharmacy would not allow it, weren't you?

11:07:45 13 A. I don't know that I was told that, but that was the
11:07:47 14 guidance that we were being given.

11:07:48 15 Q. All right. But at least for your purposes, because I took
11:07:54 16 you to task on this and said, where did a board of pharmacy
11:07:57 17 ever say it to you, recognizing there are 50 boards of
11:08:02 18 pharmacies among the 50 states; right?

11:08:06 19 A. That's correct.

11:08:07 20 Q. And, so, within the framework of that, my question to you
11:08:12 21 was repeatedly, where did you get it from, and you got it from
11:08:16 22 others at Walmart, it was Walmart policy and understanding;
11:08:20 23 right?

11:08:22 24 A. That is correct.

11:08:25 25 Q. And, so, for example, I would like you to -- do you have a

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11:08:31 1 set -- I sent Rachel and Jessie there with a set of exhibits.

11:08:37 2 Do you have Plaintiffs' Exhibit 14643?

11:08:40 3 And, Ms. Fleming, if you would pass that out.

11:08:42 4 I've got it, I can put it on this overscreen so that

11:08:46 5 you can see it if you don't have ready access to it, sir.

11:08:53 6 A. 14643?

11:08:55 7 Q. Yes, sir. It's an e-mail from you that's dated

11:08:58 8 January 28th of 2013. So we're back in this time period of

11:09:08 9 that Walmart policy.

11:09:16 10 Have you had a chance to grab that, sir, or can you
11:09:17 11 see it on the screen?

11:09:18 12 A. Yes, sir, I have it. There are several pages of that for
11:09:20 13 me. Is it multiple copies, is that what I have?

11:09:23 14 Q. I don't think you've got multiple copies. I think what
11:09:26 15 happens is you've got the first page reference in the e-mail is
11:09:33 16 at the bottom of Page 2, and this is before you get added to
11:09:37 17 the e-mail chain. It's from John -- how do I say -- do I say
11:09:42 18 his name Loranger?

11:09:45 19 A. I believe.

11:09:46 20 Q. To John Smasal and it's on Halloween, 2012.

11:09:57 21 Do you see that?

11:10:06 22 A. Yes, sir.

11:10:06 23 Q. I found that.

11:10:08 24 Yeah. So this says that all of the registered
11:10:12 25 pharmacists are using the PMP website.

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11:10:18 1 What do you understand PMP to stand for?

11:10:27 2 A. Prescription monitoring program.

11:10:28 3 Q. And in Ohio it's called the OARRS program, but this is just
11:10:35 4 a common abbreviation used across the industry for those
11:10:39 5 programs; right?

11:10:40 6 A. I believe that's accurate.

11:10:41 7 Q. All right. All registered pharmacists are using the
11:10:46 8 prescription monitoring program for all oxy 30 and any other
11:10:54 9 prescription fills that they deem necessary based on the
11:10:55 10 judgment.

11:10:56 11 Do you see that?

11:10:59 12 A. That is what the document says.

11:11:08 13 Q. And then it says -- well, they are noting there finding on
11:11:11 14 the prescription and in the patient notes as well, and it just
11:11:15 15 continues to look at a situation where ultimately it says, "In
11:11:20 16 speaking to the prescription staff, they do have concerns about
11:11:23 17 the prescribing practices of a few doctors."

11:11:27 18 Do you see that?

11:11:30 19 A. I see what's highlighted, yes.

11:11:32 20 Q. And the reply from John Loranger, up above, or the next
11:11:40 21 e-mail from John Loranger, is actually January 25th on this
11:11:44 22 chain. So we're a couple of months later when he sends a
11:11:47 23 reply -- sends a follow up.

11:11:51 24 Do you see? Are you able to see it, sir?

11:12:00 25 A. I do see it.

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11:12:01 1 Q. And in that follow up he says, "The grants pass
11:12:06 2 prescription is insisting that Dr. Linda Picker Johnson is like
11:12:10 3 a revolving door of scripts. They're establishing patient
11:12:15 4 prescriber relations and they all seem to meet the
11:12:19 5 requirements, it's just the volume of narcotic scripts that
11:12:24 6 come from this office that is astonishing."

11:12:27 7 Do you see that, sir?

11:12:32 8 A. I see what's written there, yes, sir.

11:12:33 9 Q. And then the reply is, "This is one of the two stores that
11:12:38 10 we had concerns about the quantity of C-II."

11:12:45 11 Those are Schedule II controlled drugs; right?

11:12:48 12 A. Yes, sir.

11:12:50 13 Q. That would include Oxycontin and oxycodone, and then I
11:12:56 14 think October of 2014, hydro -- all the hydro was moved from
11:13:03 15 Schedule III to II, but at this point in time hydro is
11:13:07 16 Schedule III; correct?

11:13:08 17 A. I believe that's accurate.

11:13:09 18 Q. "This is one of the two stores we had concerns about the
11:13:12 19 quantity of C-II prescriptions being processed. Can some
11:13:18 20 analysis be done to get an understanding of controlled
11:13:22 21 substance prescriptions coming from this doctor? If the
11:13:27 22 pharmacists are feeling uncomfortable with this doctor's
11:13:30 23 prescribing habits, I will ask for your advice how to best
11:13:34 24 handle."

11:13:34 25 Do you see that?

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11:13:35 1 A. That's what the document says.

11:13:36 2 Q. All right. And then we move to the front page where

11:13:38 3 ultimately you get called in on this and you send an e-mail out

11:13:44 4 about a week later.

11:13:46 5 Do you see that? Are you able to see it?

11:13:55 6 A. I see it.

11:13:57 7 Q. You said, "Gentlemen, I hope you had a great weekend. This

11:14:03 8 issue of heavy writers of C-II and other controlled substance

11:14:08 9 prescriptions comes up frequently across our trade area. It's

11:14:11 10 impossible for any of us here in the home office, or for you as

11:14:14 11 regional and market directors, to make a determination of the

11:14:19 12 validity of these prescriptions."

11:14:21 13 Do you see where I'm reading?

11:14:24 14 A. I see what you've highlighted, yes, sir.

11:14:28 15 Q. "The state boards of pharmacies grant the pharmacists

11:14:32 16 professional judgment that can be exercised when the controlled

11:14:35 17 substance prescription is presented. We have multiple POMs

11:14:40 18 available to assist the pharmacists in making such decisions."

11:14:43 19 Do you see that as well?

11:14:46 20 A. I see what you've highlighted, sir.

11:14:48 21 Q. Do you remember what POM stands for?

11:14:54 22 A. Pharmacy operations manual.

11:14:57 23 Q. And that's something that was -- the Walmart set of

11:15:02 24 policies; right?

11:15:07 25 A. Walmart set of policies, yes, sir.

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11:15:11 1 Q. You put in here this sentence that we see over and over,
11:15:17 2 they are not allowed to blanket refuse prescriptions from a
11:15:23 3 prescriber's office. That authority is granted to only the
11:15:28 4 state medical board who will suspend a prescriber's license if
11:15:32 5 they believe the prescriber is a threat to public safety.

11:15:38 6 Did I read that correctly?

11:15:39 7 A. That's what the document says.

11:15:39 8 Q. And this is what you were told was Walmart policy; correct?

11:15:47 9 A. That was my understanding of the policy.

11:15:49 10 Q. And the reason you repeat this mantra over and over and
11:15:54 11 over again is because you're putting out there what Walmart
11:16:00 12 policy is; right?

11:16:02 13 A. That was my understanding at the time, but again, I want to
11:16:04 14 remind you I'm not the only one sending that information out.

11:16:08 15 Q. Right. It's not as if you misunderstood Walmart policy;
11:16:12 16 right?

11:16:13 17 A. That is correct.

11:16:14 18 Q. So this is a blanket that I have drawn, and a blanket is
11:16:25 19 something that covers up other things; right?

11:16:35 20 A. That may be your definition, sir.

11:16:37 21 Q. Well, I mean, it's pretty decent. You're in a -- you live
11:16:41 22 in Arkansas, don't you?

11:16:45 23 A. Yes, sir.

11:16:46 24 Q. Don't you all also call blankets covers?

11:16:56 25 A. I don't know if it would be called a blanket.

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11:16:59 1 Q. Doesn't matter. My point is a blanket refusal to fill
11:17:04 2 means we are not going to fill any prescriptions from that
11:17:10 3 doctor; right?

11:17:15 4 A. That is the definition.

11:17:22 5 Q. So in a sense it says, based on our information, this is
11:17:25 6 not a doctor that we're comfortable filling prescriptions for
11:17:31 7 so we will issue a blanket refusal to fill; right?

11:17:40 8 A. Again, we didn't have a blanket to refuse to fill policy or
11:17:43 9 program in place so I don't know what actually would have done.

11:17:45 10 Q. And I understand that. I'm just making sure we understand
11:17:47 11 that when you say they're not allowed to blanket refuse
11:17:50 12 prescriptions that's because your understanding of Walmart
11:17:55 13 policy and that of your cohorts was that it had to be done on a
11:18:00 14 prescription-by-prescription basis, it couldn't be done as
11:18:04 15 blanket for a full cover; right?

11:18:07 16 A. That was the guidance that was being given at the time,
11:18:09 17 yes, sir.

11:18:09 18 Q. And that guidance that was given at the time was given to
11:18:14 19 you and you were then passing it on to others. Fair?

11:18:18 20 A. I want to make it clear, again, that I'm not the only one
11:18:22 21 that had that information. My colleagues did this as well.

11:18:24 22 Q. And I don't mean to insinuate that you were the only one.
11:18:30 23 You're just the only one under oath right now, so you're the
11:18:33 24 only one I can ask about. Okay?

11:18:36 25 A. I understand.

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11:18:37 1 Q. And you can continue -- I'm not trying to cut you off from
11:18:40 2 saying, hey, others were teaching the same policy. I'm not
11:18:44 3 trying to cut you off. I just want you to understand I'm not
11:18:47 4 insinuating anything with my questions. Okay?

11:18:50 5 A. I understand.

11:18:51 6 Q. All right. Great.

11:18:52 7 Now, as a result, look at the next month. This is
11:18:58 8 Plaintiffs' Exhibit 26892.

11:18:59 9 Ms. Fleming, if you could give opposing counsel, and
11:19:04 10 Mr. Nelson, if you'd look, it's 26892.

11:19:28 11 A. Okay. I have it.

11:19:29 12 Q. Got it?

11:19:30 13 Let's start this one. This is a 4-page document. The
11:19:35 14 first e-mail is on the third page, the bottom half, and that's
11:19:39 15 where we'll start, and we'll bring ourselves up current from
11:19:44 16 there. Okay?

11:19:45 17 A. Okay.

11:19:45 18 Q. Now, it starts out February 21st of 2013, and again, you're
11:19:50 19 not on the initial e-mail. It hasn't bumped to your level yet.
11:19:55 20 You get on it in a little bit. You see?

11:19:59 21 A. I see the first portion, yes.

11:20:02 22 Q. It begins, "Hello, I'm sending this e-mail out because I
11:20:08 23 have great concern for a situation that could potentially
11:20:11 24 become bad. The wellness clinic of Roland is continually write
11:20:21 25 prescription for large numbers of multiple narcotic pain

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11:20:23 1 relievers."

11:20:25 2 Do you see that, sir?

11:20:26 3 A. That's what the document says.

11:20:27 4 Q. Other chain and independent pharmacies in the area have
11:20:34 5 stopped accepting prescriptions from this clinic. Now, the
11:20:41 6 sentence isn't over, but I want to pause there.

11:20:44 7 Do you see where I've paused?

11:20:45 8 A. I see what you've underlined.

11:20:50 9 Q. So this sentence is saying that others, unspecified chain
11:20:54 10 and independent pharmacies, but others have a blanket refusal
11:20:58 11 to fill; right?

11:21:04 12 A. I don't know if they have a blanket refusal to fill or not,
11:21:07 13 sir. It just says that these stores, according to this
11:21:10 14 pharmacy in that area, have stopped filling prescriptions for
11:21:12 15 that clinic.

11:21:13 16 Q. All right. Then I'm going to put that where I've written,
11:21:15 17 "Others have a blanket refusal to fill," I'm going to put
11:21:19 18 Mark Lanier on that because that's me saying it, but I'd like
11:21:22 19 to leave it on there because I want to challenge you a little
11:21:25 20 on it.

11:21:25 21 What would you, using Walmart terminology, what would
11:21:29 22 you call it if a chain or an independent pharmacy said we will
11:21:34 23 not accept any prescriptions from this clinic, period?

11:21:42 24 What would you call that?

11:21:43 25 A. When you -- when you say you're not going to fill

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11:21:47 1 prescriptions from a clinic, I'm not real sure what that is
11:21:49 2 because we've been talking about blanket refusal for particular
11:21:53 3 doctors. I don't know what a clinic means.

11:21:55 4 Q. Well, in that situation, let's say that the clinic has one
11:21:58 5 doctor. Would you call it a blanket refusal to fill from that
11:22:02 6 one doctor?

11:22:03 7 A. If that -- if the document stated that I would, yes.

11:22:07 8 Q. Would you -- what -- define for us, please, what a blanket
11:22:12 9 refusal to fill is in your terminology, Walmart's terminology.

11:22:18 10 A. I can't speak to Walmart's terminology because there was
11:22:20 11 not a blanket authorization -- excuse me, a blanket refusal to
11:22:25 12 fill program in place when I was there, so I can't answer that
11:22:30 13 question on Walmart's behalf.

11:22:31 14 Q. Sir, you've already -- we just looked at a document where
11:22:35 15 you specifically said that you're not allowed to issue a
11:22:41 16 blanket refusal on prescriptions. Remember?

11:22:50 17 A. That's true.

11:22:51 18 Q. So that was your language. What is a blanket refuse of
11:22:54 19 prescriptions?

11:22:56 20 A. Again, I'll remind you, Mr. Lanier, that's not my language,
11:22:59 21 that's what Walmart guidance was at the time.

11:23:02 22 Q. But you put it in there. You said it, sir. Plaintiffs'
11:23:09 23 Exhibit 14643 is your e-mail.

11:23:11 24 You're Brad Nelson, aren't you?

11:23:16 25 A. I am, sir.

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11:23:16 1 Q. And you said, "They are not allowed to blanket refuse
11:23:24 2 prescription from a prescriber's office."

11:23:25 3 Do you see that?

11:23:32 4 A. That is what that document says.

11:23:32 5 Q. That's what you said in that document, isn't it?

11:23:36 6 A. I believe that information comes directly from the POM sir.

11:23:41 7 Q. No, that wasn't my question, sir. I said, that's what you
11:23:46 8 said in that document, isn't it?

11:23:46 9 A. That's the information the POM said that I communicated in
11:23:50 10 this document, yes, sir.

11:23:51 11 Q. In other words, yes, Mr. Lanier, that's what I said in the
11:23:55 12 document, I got it from Walmart, right?

11:24:02 13 MR. MAJORAS: Objection. Badgering.

11:24:03 14 THE COURT: Overruled. Overruled.

11:24:05 15 THE WITNESS: Again, it looks like that information
11:24:09 16 came from the POM, and I put it in this e-mail.

11:24:11 17 BY MR. LANIER:

11:24:12 18 Q. So when you said they are not allowed to blanket refuse
11:24:15 19 prescription from a prescriber's office, what did you mean?

11:24:23 20 A. What the document states, they're not allowed to choose not
11:24:26 21 to fill prescriptions from a prescriber.

11:24:31 22 Q. What -- but I'm asking you, when does it mean to blanket
11:24:37 23 refuse prescriptions from a prescriber's office?

11:24:46 24 A. It would mean not to fill prescriptions for that
11:24:48 25 prescriber.

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11:24:49 1 Q. I'm sorry, from that what?

11:24:51 2 A. From that prescriber.

11:24:53 3 Q. But you said from his office. That would be like his
11:24:56 4 clinic.

11:24:58 5 A. I would assume most doctors work out of an office, sir.

11:25:02 6 Q. All right. So let's go back to this e-mail. "Other chain
11:25:07 7 and independent pharmacy in the area have stopped accepting
11:25:11 8 prescriptions from this clinic."

11:25:14 9 Do you see that?

11:25:16 10 A. That's what the document says.

11:25:18 11 Q. "Which is causing them to funnel in to our Walmart stores."

11:25:25 12 Y'all have become the funnel for these people. Do you
11:25:29 13 see that?

11:25:30 14 A. I see that that's that pharmacist's opinion.

11:25:38 15 Q. "Although a rise in business is good, this isn't the type
11:25:41 16 of business we want. A high percentage of these customers seem
11:25:44 17 suspicious and sometimes even lie about being short of
11:25:48 18 medication wasting our time having to check video on things.
11:25:51 19 We clearly double count and back count. They also flood our
11:25:55 20 phone lines daily asking if we have sufficient quantities of
11:26:00 21 oxy, roxy such."

11:26:02 22 Do you see that?

11:26:08 23 A. That is what the document says.

11:26:09 24 Q. "Also, with the recent actions against the Walgreens
11:26:13 25 pharmacies in Florida, I, along with our colleagues" -- then it

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11:26:17 1 names four others.

11:26:18 2 Do you see that?

11:26:20 3 A. That's what it says.

11:26:20 4 Q. -- "feel that we need to stop accepting prescriptions from
11:26:24 5 this clinic."

11:26:28 6 Do you see that?

11:26:33 7 A. Again, that's what it says.

11:26:34 8 Q. The pharmacists in these Walgreens stores have been called
11:26:37 9 in front of the DEA to be questioned on why they felt there's a
11:26:40 10 legitimate medical need for such high quantities and multiple
11:26:43 11 prescriptions for these drugs.

11:26:45 12 Are you still tracking with me?

11:26:47 13 A. That's what the document says.

11:26:49 14 Q. And then the document's got all capital letters, "There is
11:26:53 15 not (other than feeding addiction and diversion), not a single
11:27:03 16 one of us ever feel comfortable about filling these
11:27:06 17 prescriptions, and if questioned, we would not be able to
11:27:10 18 justify this type of prescribing."

11:27:15 19 Do you see that, sir?

11:27:22 20 A. That is what the document says.

11:27:22 21 Q. "We continue to fill them because if we call to verify
11:27:25 22 doctor/patient relationship, they tell us bogus information."

11:27:30 23 Do you see that as well?

11:27:32 24 A. That's what it says.

11:27:33 25 Q. "At first, they would not even verify the relationship

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11:27:40 1 stating it was a HIPAA breach."

11:27:43 2 You know what HIPAA is, don't you?

11:27:45 3 A. Yes, sir.

11:27:46 4 Q. It's a requirement to keep confidential certain patient
11:27:50 5 identification information; right?

11:27:53 6 A. That is one portion of it, yes, sir.

11:27:55 7 Q. "We stopped filling the oxy 30 due to this and they
11:27:59 8 suddenly changed their tune about providing us information, and
11:28:03 9 we can't possibly fill out forms for when we deny each of these
11:28:07 10 patients."

11:28:08 11 Do you see that?

11:28:11 12 A. That's what the document says.

11:28:12 13 Q. Because Walmart policy was if you're going to deny it, you
11:28:14 14 have to fill out this long form; right?

11:28:18 15 A. I don't know about a long form, but we asked them to fill
11:28:22 16 out a refuse to fill.

11:28:23 17 Q. If you'll look at the end of her e-mail on the next page,
11:28:27 18 I've highlighted this paragraph, "I think if we continue to do
11:28:32 19 this we're going to be in serious trouble and quickly trigger
11:28:36 20 an investigation. We don't want to continue filling from this
11:28:39 21 clinic. Other pharmacies are stopping, and I feel it's
11:28:42 22 imperative with follow suit. It will look bad if we're the
11:28:45 23 only -- if we are the ones allowing these drugs to be abused or
11:28:50 24 even on the street."

11:28:52 25 Did you see that?

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11:28:55 1 A. That's what the document says.

11:28:56 2 Q. And then this document gets sent to you with, "Brad, can

11:29:02 3 you give us some advice with this situation, please?"

11:29:05 4 Do you see that as well?

11:29:08 5 A. I do see that.

11:29:10 6 Q. And here is where you step into the picture and you send an

11:29:18 7 e-mail out February 22nd.

11:29:22 8 Do you see that e-mail? It's Page 1.

11:29:29 9 Well, before we do that, let's go to Page 2 because

11:29:32 10 you've actually e-mailed previously. Look at Page 2.

11:29:37 11 You said, "Here's a document we've used in the past to

11:29:41 12 assist stores and clubs when they're faced with fraudulent or

11:29:44 13 non-legitimate prescriptions being passed in their communities.

11:29:49 14 Feel free to use this and send to your market directors. This

11:29:53 15 is in pdf format, so I think they can send it directly to their

11:29:59 16 stores for guidance on how to handle fraudulent prescriptions

11:30:02 17 or suspected forgeries. State boards of pharmacy do not allow

11:30:07 18 for blanket refusals of all prescriptions from a prescriber.

11:30:13 19 They do allow the pharmacists to exercise their professional

11:30:16 20 judgment for individual prescriptions."

11:30:19 21 Do you see that?

11:30:22 22 A. Yes, sir.

11:30:23 23 Q. So when you got this e-mail for your advice on how others

11:30:29 24 have stopped accepting prescriptions from this clinic, of how

11:30:37 25 Walmart seems to be the only one that's doing it, you write

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11:30:40 1 back and say, we're not allowed to do that even though others
11:30:47 2 have?

11:30:52 3 A. That's what the document says.

11:30:54 4 Q. But you even here say this is -- here's some -- a pdf on
11:30:59 5 how to handle fraudulent prescriptions or suspected forgeries.
11:31:02 6 That wasn't the problem here. These weren't fraudulent, they
11:31:06 7 weren't forgeries. They were bad; right?

11:31:13 8 A. In this pharmacist's opinion, yes, sir, they were.

11:31:16 9 Q. In fact, you got a reply e-mail that said, "Brad, the thing
11:31:21 10 is, these aren't fraudulent or forged prescriptions. The
11:31:25 11 clinic is very much real and is prescribing these. But
11:31:31 12 professionally as a pharmacist the only reason these high
11:31:34 13 quantities would be needed are for addiction or diversion. I
11:31:40 14 could not justify a patient need for these medications if
11:31:43 15 questioned in court or by the DEA.

11:31:48 16 "Also, I did fill out web forms last summer regarding
11:31:53 17 some fraudulent prescriptions from some other sources other
11:31:56 18 than this clinic. I think I even have them on file in my
11:32:00 19 refusal fraudulent fill folder, along with the doctor -- some
11:32:05 20 doctor's statements. It concerns me you didn't get these."

11:32:09 21 Do you see that?

11:32:11 22 A. That's what that document says.

11:32:13 23 Q. And she's referencing your comment in the earlier e-mail
11:32:16 24 that "In the two years since this pharmacy operation manual
11:32:20 25 section was introduced, Store 388 has not submitted any refusal

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11:32:26 1 to fill or fraudulent activity web forms, therefore, its DEA
11:32:30 2 has not been notified of any non-legitimate prescription
11:32:32 3 activity in the area."

11:32:35 4 She says, "Well, I've sent them."

11:32:41 5 Do you see that?

11:32:42 6 A. I see what she says in the e-mail, yes, sir.

11:32:45 7 Q. And then you reply, and you say, "Leann, if you refuse to
11:32:52 8 fill these prescriptions, then this pharmacy operation manual
11:32:56 9 section applies and the web form should completed. If your
11:33:02 10 refusal to fill web forms were sent from Store 388, then there
11:33:06 11 may have been an error on the form which prevented the form
11:33:09 12 prosecute being submitted. All fields have to be completed for
11:33:14 13 the web form to be transmitted."

11:33:20 14 Is that right?

11:33:21 15 A. That is correct, sir.

11:33:21 16 Q. So the pharmacist can be filling out a form and submitting
11:33:25 17 a form of a refusal to fill to Walmart, and if they left
11:33:30 18 anything blank and didn't understand that they needed to fill
11:33:33 19 everything in, it just doesn't get tallied?

11:33:41 20 A. Well, the pharmacist is notified when the form is not
11:33:44 21 completed and says, you must complete -- this information is
11:33:48 22 required information. This store must have missed that
11:33:55 23 information or chosen not to put it in there.

11:33:58 24 Q. And you've got a system that doesn't accept the refusal to
11:34:02 25 fill forms if there's, like, something left blank, even if it's

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11:34:06 1 totally irrelevant?

11:34:09 2 A. Well, it wouldn't be totally irrelevant if it's a required
11:34:12 3 field.

11:34:13 4 Q. Okay. Pharmacists are granted the ability to exercise
11:34:18 5 their professional judgment and choose to refuse -- choose to
11:34:23 6 refuse to fill any prescription if they feel -- and here's
11:34:27 7 where you just do that same mantra you do over and over and
11:34:30 8 over in reply to these; correct?

11:34:33 9 A. Again, I'll repeat my information before. I'm not the only
11:34:37 10 one that sends out that information.

11:34:38 11 Q. Right. This is where you selected that same mantra that
11:34:43 12 you cut and paste and put in all of these; correct?

11:34:46 13 A. I put it in this particular response, yes, sir.

11:34:56 14 Q. So we've got that in February of 2013. Then you've got
11:34:59 15 another situation that arises a month later in Georgia. This
11:35:03 16 is Plaintiffs' Exhibit 26822.

11:35:07 17 If we could pass that out, please, Ms. Fleming.

11:35:19 18 Do you have that document, sir?

11:35:21 19 A. You said 26822; is that correct?

11:35:23 20 Q. No. I'm sorry. It's 26882.

11:35:27 21 A. There you go.

11:35:28 22 Q. That's my mistake and that explains why Ms. Fleming's
11:35:31 23 wondering what I was drinking this morning.

11:35:42 24 A. I have found that, sir.

11:35:43 25 Q. Thank you. Let me make sure that the Walmart lawyers get

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11:35:45 1 it in court.

11:35:46 2 Okay. Now, this is one that starts on Page 2 there is
11:35:54 3 an e-mail from Melody Odom, March of 2013, about a doctor under
11:35:59 4 investigation.

11:36:01 5 Do you see that?

11:36:06 6 A. That's what the e-mail is titled.

11:36:08 7 Q. "Hello Marcey" -- or "Hey, Marcey" -- excuse me -- "thank
11:36:11 8 you for taking to the time talk with us about the refusal to
11:36:16 9 fill situation today. We will be more vigilant about the
11:36:21 10 situations in the future. Additionally, I recently heard about
11:36:30 11 Georgia starting up a PMP" --

11:36:31 12 That's a prescription monitoring program; right?

11:36:40 13 A. That is correct.

11:36:40 14 Q. -- "which will alleviate this situation greatly. Just
11:36:42 15 wanted to send you the information on the medical practice and
11:36:45 16 physician that's overprescribing multiple C-II's oxycodone
11:36:53 17 30 milligrams in particular. He's currently under
11:36:57 18 investigation. We'll make every effort to fill these scripts
11:37:01 19 now unless overdosage amounts are prescribed."

11:37:05 20 Do you see that?

11:37:11 21 A. That's what's written in that document.

11:37:13 22 Q. So after y'all spoke with her, she says we'll make every
11:37:17 23 effort to fill these prescriptions unless it's an overdose
11:37:23 24 amount; right?

11:37:23 25 A. Sir, I don't believe I've ever spoke to this individual

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11:37:25 1 directly.

11:37:25 2 Q. Well, no, you didn't. It looks like Marcey Cring did.

11:37:31 3 Do you know Marcey?

11:37:37 4 A. I quite honestly don't recall Marcey.

11:37:41 5 Q. Okay. Well, she e-mailed it to you -- and we'll get to
11:37:46 6 your reply here in a moment. But continue looking at this
11:37:46 7 e-mail that you got forwarded to you. The practice in question
11:37:49 8 is listed. The doctor who's currently indicted is listed. The
11:37:57 9 doctor who's under investigation is listed, and it says, "As my
11:38:05 10 understanding goes, the DEA has attempted to shut down the
11:38:06 11 practice, but since it's not owned by the physicians they hire
11:38:13 12 they are having difficulty. Also, they shut down a previous
11:38:16 13 location and the owners just opened up a new business somewhere
11:38:19 14 else in town. They don't accept medical insurance. If
11:38:24 15 patients are willing to pay a \$500 office fee, the physician
11:38:27 16 will write you anything you want. I've never been there
11:38:36 17 myself, but multiple patients have confirmed this for me."

11:38:40 18 Do you see that?

11:38:40 19 A. That is what the document states.

11:38:42 20 Q. And then it says "The Georgia DEA agent who advised me not
11:38:46 21 to fill and provide patients with his contact phone number if
11:38:51 22 they became aggressive is," and identifies that gentleman.

11:38:54 23 Do you see that?

11:38:57 24 A. That's what it says.

11:38:58 25 Q. So this is the -- these are the scripts that now we'll make

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11:39:06 1 every effort to fill.

11:39:08 2 Do you see that, sir?

11:39:09 3 A. I see where it says they'll fill them only if they're not
11:39:13 4 considered overdoses.

11:39:15 5 Q. Well, Marcey sends this to you and says, "Brad, I've asked
11:39:21 6 my manager in Augusta, Georgia to send me this information so I
11:39:26 7 could pass it on. As I talked to the pharmacists at that
11:39:28 8 location, they advised me the local DEA agent specifically
11:39:31 9 asked them not to fill prescriptions from a particular
11:39:35 10 prescriber, and both the agent and provider information is
11:39:40 11 below. For now, I advised them we cannot honor that request,
11:39:45 12 blanket refusals. But I would share this with you for review
11:39:49 13 in case we wanted or needed to make an exception."

11:39:57 14 Do you see that?

11:39:59 15 A. That's what Marcey wrote.

11:40:03 16 Q. So with the idea that maybe if you wanted or needed to, an
11:40:08 17 exception to Walmart's policy could be made; right?

11:40:15 18 A. That was Marcey's opinion.

11:40:16 19 Q. And then you wrote her back, and you said, "You are wise
11:40:25 20 beyond your years. You are 100 percent correct in stating
11:40:30 21 we're not offered the ability to blanket refuse prescriptions
11:40:33 22 from a practice or a prescriber. If this prescriber is such a
11:40:39 23 danger to the public safety, then the DEA or medical board
11:40:44 24 pleads to suspend his registration or his license."

11:40:46 25 Do you see that?

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11:40:47 1 A. That's what the document states.

11:40:49 2 Q. And then you -- you can even tell it's a different type, a
11:40:53 3 different font, if you will. You cut and paste and insert in
11:41:03 4 that same language you do frequently, "I would encourage you to
11:41:07 5 review these. You're granted the ability to exercise your
11:41:10 6 professional judgment," on and on and on, "no blanket refusals
11:41:15 7 are allowed by boards of pharmacies," on and on and on.

11:41:18 8 Do you see that?

11:41:21 9 A. I see that, but again, I'll remind you that I'm not the
11:41:23 10 only one who sends that out.

11:41:25 11 Q. Right. That's Walmart policy; right?

11:41:29 12 A. That is the guidance that was being given at the time.

11:41:36 13 Q. Now, let's go north. Plaintiffs' Exhibit 26874. If you
11:41:44 14 would pull that out, please.

11:41:48 15 A. I apologize, I missed that number. What was it again?

11:41:53 16 Q. Sir, it is 26874.

11:42:11 17 Do you have that in front of you, sir?

11:42:14 18 A. Yes, sir.

11:42:16 19 Q. And what I'd like to do on this one is start on the very
11:42:22 20 last page, it's Page 5, an e-mail from Michael Schultz to
11:42:31 21 William Mobley, April 10th, 2013.

11:42:36 22 Do you see that?

11:42:42 23 A. I see that.

11:42:42 24 Q. I'm sorry, sir, what did you say? You see that?

11:42:46 25 A. I do see that.

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11:42:47 1 Q. Okay. Thank you.

11:42:53 2 It says, "Will, do we have a contact at the state of
11:42:55 3 Michigan? I'm a local doctor that's been investigated by the
11:42:58 4 state. According to a competitor, his license is not valid.
11:43:01 5 The problem is that the license verification information at the
11:43:05 6 state states his license status is disciplinary limited. I
11:43:14 7 can't get confirmation as to what that specifically means. The
11:43:20 8 e-mail -- or the state requires we request that information
11:43:21 9 through the Freedom of Information Act available through a
11:43:24 10 request via e-mail. My Walmart e-mail doesn't allow me to
11:43:28 11 e-mail the state for clarification. Also, I'm having trouble
11:43:33 12 gaining access to Relay Health. Any ideas where to start so
11:43:41 13 we're legally correct in our response?"

11:43:45 14 Do you see that?

11:43:45 15 A. That's what that document says.

11:43:48 16 Q. And this makes it up the chain to you when William Mobley
11:43:51 17 on Page 2 sends it to you and says, "Brad, is the below string
11:43:56 18 something you can help with? We've been notified by a
11:44:01 19 pharmacists at Walgreens in the area that a doctor has an issue
11:44:04 20 with his license and we shouldn't fill scripts. We're having
11:44:08 21 difficulty verifying and getting enough information to ensure
11:44:12 22 we're correct in declining scripts. Thank you for your help."

11:44:17 23 You write back, front page.

11:44:20 24 Do you see it? Do you see it, sir?

11:44:26 25 A. Yes, sir. Yes, sir, I see that.

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11:44:28 1 Q. You said, at this point, this prescriber still has all the
11:44:33 2 necessary credential to practice medicine. And then you give
11:44:36 3 that same cut and paste section that you and others give;
11:44:42 4 correct?

11:44:45 5 A. Yes, sir.

11:44:46 6 Q. And you've got the screenshot from the DEA that indicates
11:44:52 7 this fellow's still got a license for DEA purposes; correct?

11:44:58 8 A. Yes, sir.

11:45:07 9 Q. Now, sir, the refusal to fill process was something that in
11:45:11 10 a sense you owned at Walmart; didn't you?

11:45:19 11 MR. MAJORAS: Objection, form.

11:45:20 12 THE COURT: Sustained.

11:45:21 13 BY MR. LANIER:

11:45:21 14 Q. Okay. Sir, pull Plaintiffs' Exhibit 14223.

11:45:29 15 And, Ms. Fleming, if you'd pass that out.

11:45:40 16 Do you have that in front of you, sir?

11:45:44 17 A. Whoops, I think I pulled 14223A. Hold on.

11:45:50 18 Q. It should look like an e-mail on the cover, but then it's
11:45:55 19 got a PowerPoint attached, or at least some slides maybe from a
11:46:00 20 PowerPoint.

11:46:06 21 A. I have that now. Thank you.

11:46:07 22 Q. Okay. This is 2013, and it's a focus area deck maybe on
11:46:21 23 the suspicious order monitoring program. It's SOMP.

11:46:24 24 Do you see that?

11:46:30 25 A. I see what it says, yes, sir.

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11:46:31 1 Q. What I'd like you to do is go to Page 4 of that document in
11:46:38 2 the lower right-hand corner, and it's got a section where it
11:46:42 3 talks about refusal to fill and it references you.

11:46:46 4 Do you see that?

11:46:53 5 A. I see this particular slide deck, sir, but I don't know
11:46:56 6 where it came from.

11:46:58 7 Q. Well, my question to you is simple. Were you aware of the
11:47:03 8 fact that Walmart internally on refusal to fill, set out to
11:47:10 9 establish a process for the analysis of refusal to fill data
11:47:15 10 and reporting problematic prescribers or patients internally
11:47:20 11 and the owner is Brad Nelson.

11:47:24 12 Do you see that, sir?

11:47:27 13 A. That is what the document says.

11:47:29 14 Q. Okay. So when I was saying you were the owner of this, I
11:47:33 15 was taking the language from Walmart's document.

11:47:36 16 Do you see that?

11:47:38 17 A. I -- somebody created this slide deck. I don't see Walmart
11:47:42 18 on it anywhere.

11:47:46 19 Q. Well, if you look on the very front page, sent by Kristy
11:47:56 20 Spruell, JD, senior manager, strategy, compliance, safety, and
11:48:05 21 asset protection logistics, Walmart Stores, Bentonville,
11:48:11 22 Arkansas.

11:48:12 23 Do you see that?

11:48:13 24 A. I see who sent the e-mail, yes, sir.

11:48:15 25 Q. Okay. So did anybody at Walmart ever tell you that they

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11:48:18 1 looked to you to own the establishing a process for the
11:48:23 2 analysis of refusal to fill data and reporting problematic
11:48:28 3 prescribers or patients internally?

11:48:31 4 Anybody ever tell you that?

11:48:34 5 A. I don't recall that, sir.

11:48:36 6 Q. Now, if we continue forward into 2015, there's a document,
11:48:44 7 if you would pull it, 14450. 14450.

11:49:02 8 Do you have that one yet, sir?

11:49:07 9 A. Just about. I apologize. I pulled one too many forms.

11:49:12 10 Q. Sir, you're doing a great job. Don't worry about it --

11:49:16 11 A. (Unintelligible).

11:49:16 12 Q. Yeah, it's not easy to go through that box and find these.

11:49:19 13 Plaintiffs' 14450 is an e-mail that's from
11:49:28 14 Miranda Johnson to a number of people, including you, and it's
11:49:30 15 dated July 17, 2015.

11:49:33 16 Do you see that?

11:49:42 17 Do you see that e-mail?

11:49:43 18 A. Yes.

11:49:45 19 Q. And as of July 17, 2015, it says -- excuse me -- the
11:49:57 20 updates to pharmacy operation manual 1311 that we discussed a
11:50:02 21 few months ago are now posted. Just as a reminder, the
11:50:09 22 pharmacy operation manual no longer prohibits blanket refusals.

11:50:16 23 Did I read that right?

11:50:20 24 A. That is what that document says.

11:50:24 25 Q. Do you have any reason to think that document's wrong?

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11:50:39 1 A. That's what it says.

11:50:40 2 Q. So we have a document saying, "As of July 17th, 2015, the
11:50:45 3 pharmacy operation manual for Walmart no longer prohibits
11:50:48 4 blanket refusals"; right?

11:51:01 5 A. That's what the document says, yes, sir.

11:51:03 6 Q. Then you hit a reply. Look at your reply. "Just FYI" --
11:51:12 7 that's for your information; right?

11:51:14 8 A. Yes, sir.

11:51:14 9 Q. -- "pharmacy operation manual 1311 on the wire is still
11:51:19 10 from March of 2011."

11:51:22 11 That would have been over 4 years earlier; right?

11:51:30 12 A. That's what the document says.

11:51:31 13 Q. "It does not show updated on our wire yet. Sorry to say.
11:51:35 14 We are still looking for POM 813 as well, and it's not there.
11:51:41 15 All this was supposed to go live today for refusal to fill and
11:51:46 16 CSIR."

11:51:48 17 Do you see that?

11:51:50 18 A. I do.

11:51:51 19 Q. What is CSIR?

11:51:59 20 A. I don't honestly recall.

11:52:10 21 Q. And then you conclude by saying, "I'll walk over to ops and
11:52:12 22 find out what's up."

11:52:14 23 Do you remember going over to ops and finding out
11:52:16 24 what's up?

11:52:17 25 A. Well, that's what the document states.

Nelson (Cross by Lanier)

11:52:18 1 Q. Do you remember what was up, why it was slow posting?

11:52:22 2 A. I honestly do not recall, sir.

11:52:25 3 Q. All right. So we've got July 17th, 2015, the pharmacy

11:52:30 4 operation manual no longer prohibits blanket refusals. Fair?

11:52:36 5 A. That's what this e-mail states, but until it gets posted

11:52:39 6 and put out there on the wire, the communication to the stores

11:52:43 7 would still stand, and I clearly indicated on this document

11:52:46 8 that the one from March 2011 was still in place.

11:52:51 9 Q. Yeah, because if we go to Plaintiffs' Exhibit 14540,

11:53:14 10 please. . .

11:53:25 11 Do you have that, sir?

11:53:28 12 A. Yes, sir.

11:53:29 13 Q. Okay. This is one where Micah Charles has sent an e-mail

11:53:38 14 out on refusal to fill, and this is November 11th. So we're

11:53:44 15 five months after that e-mail about the POM no longer prohibits

11:53:50 16 blanket refusals; right?

11:53:59 17 A. It is after that date.

11:53:59 18 Q. "Mickey, going forward we are denying all Dr. Ure

11:54:07 19 prescriptions. Here's what I submitted on Archer."

11:54:09 20 Archer was your computer program that you had that

11:54:13 21 handled prescriptions; right?

11:54:14 22 A. Archer was a software program that Walmart used to capture

11:54:20 23 incident recorded -- incidents that were recorded.

11:54:22 24 Q. Yes.

11:54:22 25 A. It did not fill prescriptions.

Nelson (Cross by Lanier)

11:54:24 1 Q. Right, but incident reports pertaining to prescriptions;
11:54:27 2 right?

11:54:30 3 A. That was one of the things in there, yes.

11:54:31 4 Q. All right. "Pharmacists, each time we're given a
11:54:35 5 prescription from Dr. Ure, we are to deny them due to an
11:54:40 6 inappropriate prescriber/patient relation and fill out an
11:54:43 7 Archer report."

11:54:47 8 And then in bold print it says, "No prescriptions are
11:54:50 9 to be filled from Dr. John Ure going forward."

11:54:55 10 Do you see that?

11:55:03 11 A. That's what the pharmacist wrote.

11:55:03 12 Q. And then there's an explanation down below about
11:55:06 13 experiencing suspicious activity with Dr. Ure. "Similar
11:55:11 14 trouble a year or two ago, but then the patients quit coming
11:55:12 15 until recently. He's prescribing numerous C-II prescriptions
11:55:19 16 for patients that we don't believe have a medical need for
11:55:22 17 them. Since September 24th, we've filled seven C-II
11:55:28 18 prescriptions from Dr. Ure. Prescriptions contained anywhere
11:55:29 19 from one to six prescriptions on each hard copy. Each
11:55:33 20 prescription has all required information on it to make it a
11:55:37 21 legal fill, however, red flags are everywhere. Dr. Ure
11:55:44 22 frequently calls ahead to see what C-IIs we have in stock,
11:55:48 23 always late in the evening. He then writes a prescription and
11:55:51 24 the patient brings it in."

11:55:53 25 Do you see that?

Nelson (Cross by Lanier)

11:55:55 1 A. That's what it -- that's what the pharmacist wrote.

11:55:58 2 Q. "From the past history" -- or "From past history it's
11:56:02 3 usually a new patient to us, or patients that we know have been
11:56:04 4 fired from other doctors or have a history of abuse. Most
11:56:10 5 either have some sort of Medicaid or pay cash."

11:56:14 6 Do you see that?

11:56:17 7 A. That's what it says.

11:56:18 8 Q. "He often places, quote/unquote, stolen narcotic
11:56:23 9 prescriptions for patients that we have no history of seeing
11:56:25 10 and he calls ahead to verify he's doing so and documents this
11:56:29 11 on the hard copy. Three of these seven prescriptions note
11:56:33 12 they're one-time replacement due to theft. Six of the seven
11:56:39 13 prescriptions are for patients brand new to us who don't live
11:56:42 14 in this town. The seventh is for a local patient with a known
11:56:46 15 history of abuse who was recently fired from her previous
11:56:50 16 provider."

11:56:52 17 Do you see that?

11:56:56 18 A. That's what the document says.

11:56:58 19 Q. And it goes on and on and on ending with "We're going to
11:57:01 20 deny all Dr. Ure prescriptions going forward and we'll fill out
11:57:05 21 a web form each time. You've got the pharmacy manager signing
11:57:10 22 this."

11:57:10 23 Do you see that?

11:57:14 24 A. I do see that.

11:57:15 25 Q. Now, you wrote a reply e-mail, didn't you? Page 1.

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11:57:26 1 Do you see your reply?

11:57:28 2 A. I see the e-mail from myself to Mickey Boles.

11:57:31 3 Q. Your reply e-mail says, "Mickey, please share the best
11:57:39 4 practices regarding refusal to fill prescriptions. The
11:57:46 5 communication from Micah indicates they are blank refusing to
11:57:49 6 fill prescriptions for a specific prescriber. Understand that
11:57:53 7 this is not a best practice and boards of pharmacy grant
11:57:57 8 professional judgment for individual prescriptions and not for
11:58:00 9 prescribers. The pharmacists may wish to file a complaint with
11:58:04 10 the state medical board to request an official inquiry into the
11:58:10 11 prescriber's prescription writing. Prescriptions must be
11:58:12 12 evaluated on an individual basis and red flags identified.
11:58:16 13 Then the pharmacist can refuse to fill a prescription and
11:58:19 14 report a refusal to fill report in Archer. This location has
11:58:25 15 reported four refusals to fill in 2015 and only one from
11:58:31 16 Dr. Ure. This location has not displayed a pattern of an issue
11:58:35 17 with Dr. Ure. Reporting just one refusal does not equate to
11:58:43 18 wanting to refuse all prescriptions from this prescriber."

11:58:47 19 Do you see that?

11:58:50 20 A. That's what the document says.

11:58:52 21 Q. That's what you said. That's you writing, isn't it?

11:58:57 22 A. That is my e-mail.

11:59:03 23 Q. And then you send out your cut and paste section.

11:59:07 24 Do you see that?

11:59:12 25 A. Yes, sir.

Nelson (Cross by Lanier)

11:59:13 1 Q. And in your cut and paste section you e-mail, "No blanket
11:59:17 2 refusals are allowed by the boards of pharmacy." You're still
11:59:22 3 saying that, aren't you?

11:59:22 4 A. Yes, sir.

11:59:23 5 Q. And, yet, this is five months after the POM no longer
11:59:28 6 prohibits blanket refusals; right?

11:59:35 7 A. As I recall, the information was taken out of the POM, but
11:59:40 8 there was no information that said you could blanket refuse.

11:59:42 9 Q. No, sir. My point is you've got a horrendous situation.
11:59:45 10 You've got pharmacists that want to do a blanket refusal to
11:59:48 11 fill, you tell them they cannot, that no blanket refusals to
11:59:53 12 fill are allowed even though as of July 17th Walmart changed
11:59:58 13 their policy, didn't they?

12:00:04 14 A. Walmart removed the information about blanket refusal from
12:00:08 15 the POM, but I don't recall their being information that told
12:00:11 16 them they could blanket refuse.

12:00:13 17 Q. Plaintiffs' Exhibit --

12:00:14 18 MR. LANIER: Oh, Your Honor, it is noon. I don't know
12:00:15 19 how you want to do this.

12:00:17 20 THE COURT: I -- if this is a convenient place to
12:00:20 21 stop, we will take our lunch break.

12:00:23 22 MR. LANIER: Okay. Thank you, Judge.

12:00:25 23 THE COURT: So, Mr. Nelson, we're going to break for
12:00:28 24 lunch and pick up with your testimony promptly at 1 o'clock,
12:00:30 25 sir.

Nelson (Cross by Lanier)

12:00:31 1 So, ladies and gentlemen --

12:00:32 2 MR. LANIER: This is 1 o'clock eastern time, so that's
12:00:34 3 noon your time.

12:00:35 4 THE COURT: Would be one hour from now.

12:00:37 5 All right, ladies and gentlemen, we'll recess for
12:00:40 6 lunch. Usually admonitions and then we'll pick up at 1 o'clock
12:00:43 7 with Mr. Nelson.

12:00:45 8 (Jury excused from courtroom)

12:04:43 9 (Recess was taken at 12:00 p.m.)

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Nelson (Cross by Lanier)

1 A F T E R N O O N S E S S I O N

2 - - - -

01:00:03 3 (In open court at 12:58 p.m.)

01:00:03 4 COURTROOM DEPUTY: All rise.

01:01:34 5 (Jury returned to courtroom at 1:01 p.m.)

01:01:52 6 THE COURT: Please be seated, ladies and gentlemen.

01:01:57 7 And, Mr. Lanier, you may continue. I want to make
01:02:00 8 sure we have our witness on.

01:02:04 9 MR. LANIER: Okay. There he is.

01:02:08 10 THE COURT: All right. And, Mr. Nelson, I just want
01:02:11 11 to make sure you understand you're still under oath from this
01:02:13 12 morning.

01:02:14 13 THE WITNESS: I understand.

01:02:15 14 THE COURT: Okay. Thank you.

01:02:16 15 All right. Mr. Lanier, you may continue.

01:02:17 16 MR. LANIER: Thank you, Your Honor. May it please
01:02:20 17 this Court.

01:02:21 18 BY MR. LANIER:

01:02:21 19 Q. Mr. Nelson, you can still see and hear me okay?

01:02:26 20 A. Yes, sir.

01:02:27 21 Q. Great. So we had talked about the July 17th, 2015, date as
01:02:34 22 the date when the pharmacy operation manual no longer
01:02:38 23 prohibited blanket refusals, and I had gotten us up to December
01:02:43 24 of that year with Plaintiffs' Exhibit 14552. If I can impose
01:02:51 25 on you to grab that and Ms. Fleming to pass that out.

Nelson (Cross by Lanier)

01:03:08 1 Could you have that in front of you, sir?

01:03:10 2 A. I do.

01:03:11 3 Q. And you can see that we are about December of 2015 on this

01:03:18 4 document; right?

01:03:20 5 A. December 4th.

01:03:21 6 Q. Yes, sir. And it concerns a Dr. Faizuddin Shareef.

01:03:26 7 Do you see that as well?

01:03:28 8 A. That is the subject of the e-mail.

01:03:29 9 Q. And the first e-mail is on the backside of this. It says,

01:03:39 10 "It's come to our attention that we're one of the few stores in

01:03:43 11 the area currently accepting any prescriptions for Dr. Shareef.

01:03:47 12 This includes CVS, Walgreens, as well as some other local

01:03:51 13 Walmarts. Dr. Shareef has several offices in the area that are

01:03:57 14 frequently staffed by individuals other than the doctor who

01:04:00 15 simply fill in the name of the patient and the date on

01:04:02 16 previously filled in prescriptions that contain the doctor's

01:04:05 17 signature. Most of these prescriptions are for 30 milligrams

01:04:11 18 of Adderall, some sort of antianxiety medication such as

01:04:17 19 Klonopin and also various pain medications, usually for a

01:04:21 20 15-day supply."

01:04:21 21 Do you see that?

01:04:23 22 A. That's what the document says.

01:04:24 23 Q. "When patients present the prescription, they'll frequently

01:04:28 24 tell us they've not seen the doctor, just have the prescription

01:04:33 25 filled in by the nurse. They'll also call ahead to see if

Nelson (Cross by Lanier)

01:04:36 1 we'll fill their prescription. They tell us the doctor's aware
01:04:41 2 that several stores will not take his prescriptions and advises
01:04:45 3 the patients to phone ahead. They also tell us this is usually
01:04:48 4 a cash-based business.

01:04:52 5 "We do call the office and verify prescriptions when
01:04:58 6 the writing doesn't match. We also check/inspect on each of
01:05:01 7 these patients. We'd like to get some guidance on how to
01:05:07 8 handle these prescription going forward."

01:05:08 9 Do you see that?

01:05:09 10 A. That's what the document says.

01:05:11 11 Q. And then you wrote back and said, "I would provide them
01:05:18 12 with these best practices," and you cut and paste your usual
01:05:27 13 language.

01:05:28 14 Do you see that?

01:05:29 15 A. I do.

01:05:29 16 Q. And that included your insertion of the Walmart policy, "No
01:05:33 17 blanket refusals are allowed by boards of pharmacy."

01:05:35 18 Do you see that?

01:05:36 19 A. I do.

01:05:38 20 Q. "Even though, of course, we are five months after the
01:05:42 21 pharmacy operations manual no longer prohibits such blanket
01:05:47 22 refusals." True?

01:05:49 23 A. According to that first e-mail in July, that's what it
01:05:52 24 states, sir. Again, I want to repeat that I'm not the only one
01:05:55 25 sending that information out.

Nelson (Cross by Lanier)

01:05:56 1 Q. I understand that.

01:05:59 2 Plaintiffs' Exhibit 14662, if you would pull that out,
01:06:03 3 please, 14662.

01:06:19 4 Do you have it?

01:06:20 5 A. I do.

01:06:24 6 Q. I don't have the very bottom e-mail -- strike that. I said
01:06:36 7 I don't have the very -- I have the very bottom e-mail, and
01:06:39 8 it's from a Thelma Mendez to John Marakas, and we are all way
01:06:46 9 into February of 2016.

01:06:49 10 Do you see that, sir?

01:06:54 11 A. That is the date of this e-mail, yes.

01:06:56 12 Q. "Hello. Greetings. A patient asked me about another
01:06:59 13 Walmart pharmacy telling them they will not be able to dispense
01:07:04 14 anymore their control medicines, Percocet."

01:07:07 15 That's a Schedule II opioid; right?

01:07:16 16 A. Correct.

01:07:16 17 Q. Soma. You know what Soma is, don't you?

01:07:20 18 A. Yes, sir.

01:07:20 19 Q. And Valium. This is the trinity cocktail, isn't it?

01:07:24 20 A. It's definitely a cocktail.

01:07:29 21 Q. So telling them they won't be able to dispense anymore
01:07:34 22 because it's considered a cocktail. "Is this entirely on
01:07:37 23 pharmacist's judgment, or is there any legality involved here?
01:07:41 24 Please clarify. Me, thank you again."

01:07:43 25 You see that?

Nelson (Cross by Lanier)

01:07:49 1 Do you see that, sir?

01:07:49 2 A. Yes, sir.

01:07:49 3 Q. Then it gets forwarded to you with the question, "Brad,

01:07:53 4 thoughts?" Right?

01:07:58 5 Right?

01:07:58 6 A. Correct.

01:07:58 7 Q. Then you reply -- sorry. You reply, "A cocktail is a red

01:08:04 8 flag that should alert the registered pharmacist to use their

01:08:09 9 professional judgment to refuse to fill the prescription.

01:08:12 10 There are some states that have made writing the cocktails

01:08:15 11 illegal for the prescriber, but there are no legal restrictions

01:08:18 12 for the pharmacist."

01:08:20 13 Do you see that?

01:08:24 14 A. That is what the document says.

01:08:24 15 Q. That's what you said; right? You wrote that.

01:08:27 16 A. That's what's in the e-mail, yes, sir.

01:08:30 17 Q. So the Walmart policy that you're vocalizing here is it may

01:08:37 18 be illegal to write the prescription, but that doesn't mean

01:08:41 19 it's illegal to fill the prescription; right?

01:08:42 20 A. That is not what it says.

01:08:43 21 Q. It says, "There are some states that have made writing the

01:08:48 22 cocktails illegal for the prescriber."

01:08:54 23 Do you see that?

01:08:55 24 A. That's correct.

01:08:55 25 Q. "But there are no legal restrictions for the pharmacist";

Nelson (Cross by Lanier)

01:09:00 1 right?

01:09:01 2 A. That was my understanding, sir.

01:09:03 3 Q. So the prescriber writes it -- writes the prescription;

01:09:08 4 right?

01:09:14 5 A. Yes, sir.

01:09:18 6 Q. The pharmacist fills the prescription; correct?

01:09:23 7 A. That is a possibility if they don't decide not to.

01:09:27 8 Q. Some states have made writing it illegal, but no legal

01:09:32 9 restrictions on filling it; right?

01:09:39 10 A. At that time I'm not aware of any states that had that
01:09:42 11 requirement.

01:09:43 12 Q. All right. As we continue through 2016, we're now at June,
01:09:48 13 and that puts us a full year, or the 12th month past July 17th.

01:09:57 14 Do you see that? Plaintiffs' Exhibit 26732 is the
01:10:04 15 document, sir.

01:10:05 16 A. Okay.

01:10:34 17 Q. So you've got Plaintiffs' Exhibit 26732. We are one year
01:10:39 18 after this e-mail talking about the pharmacy operation manual;
01:10:45 19 correct?

01:10:49 20 A. Yes, sir. Again, I'm not sure exactly when it got posted,
01:10:54 21 sir. We discussed that earlier.

01:10:55 22 Q. I understand. Talking about the e-mail saying that the POM
01:10:58 23 no longer prohibits blanket refusals; correct?

01:11:04 24 A. Okay.

01:11:05 25 Q. All right. So here from Deborah Jenkins is an e-mail that

Nelson (Cross by Lanier)

01:11:11 1 says, "We've come across the following in the last few months,
01:11:17 2 Dr. Philip Berent, child and adolescent psychiatry, cash pay
01:11:22 3 only, rights for Xanax, oxycodone, Adderall, Oxycontin.
01:11:34 4 Patients, cash pay then prescription insurance."

01:11:42 5 Do you see that?

01:11:48 6 A. I do.

01:11:49 7 Q. Now, this says, "Gives patient cell phone numbers and
01:11:53 8 prefers texting for its most rapid response. Available by
01:12:01 9 e-mail and does telepsychiatry via Skype."

01:12:05 10 Do you see that?

01:12:10 11 A. That is what the document says.

01:12:12 12 Q. Now, this is a child and adolescent psychiatrist, child, we
01:12:17 13 know what is, adolescent is up to the page of 18, isn't it?

01:12:23 14 A. I believe that's correct.

01:12:30 15 Q. And he's writing Xanax, oxycodone, Oxycontin.

01:12:34 16 Do you see that?

01:12:35 17 A. That's what the e-mail says.

01:12:36 18 Q. And he's doing it via Skype. Do you see that as well?

01:12:44 19 A. That's what this e-mail says.

01:12:46 20 Q. He goes on to say -- he being the doctor -- he's "chosen to
01:12:50 21 be an out of network doctor. Does not accept insurance.

01:12:55 22 Having a cash-based practice gives him the flexibility and
01:12:58 23 freedom to tailor a treatment plan that best serves each of his
01:13:04 24 patients."

01:13:04 25 Do you see that?

Nelson (Cross by Lanier)

01:13:06 1 A. That's what the e-mail says.

01:13:08 2 Q. And then you get this e-mail, "Hi, Brad, most of my stores
01:13:15 3 have brought to my attention the prescribing habits of the
01:13:19 4 below physician. It's not just one store, but most of them in
01:13:22 5 my market. We're filling out the refusal to fill forms and not
01:13:28 6 issuing any blanket refusals. I just wanted to reach out to
01:13:32 7 you to see if there's anything else we should be doing or you
01:13:35 8 need any more information with all the discussion around the
01:13:39 9 DEA and prescribing dispensing of controlled substances. Our
01:13:43 10 pharmacists are on edge about him and his patients."

01:13:47 11 Do you see that?

01:13:50 12 A. That's what it says, yes, sir.

01:13:51 13 Q. Now, you e-mail back and you say the same thing you put
01:13:59 14 into all of them with no blanket refusals are allowed; correct?

01:14:05 15 A. That is what this document says, sir.

01:14:07 16 Q. Yeah, that's the e-mail you sent; right?

01:14:10 17 A. That is correct.

01:14:11 18 Q. Okay. And so we understand the significance of this, you
01:14:19 19 might have one Walmart store over here (indicating), you might
01:14:31 20 have another Walmart store over there (indicating), and if one
01:14:39 21 of the registered pharmacists at this store (indicating) here's
01:14:46 22 something -- that's an ear. Here.

01:14:54 23 This pharmacist hears something bad. If you have a
01:15:03 24 blanket refusal to fill, then it's in the computer system, and
01:15:12 25 it doesn't matter which Walmart the patient walks into, either

Nelson (Cross by Lanier)

01:15:15 1 one, a blanket is going to cover it, isn't it?

01:15:22 2 A. Sir, I don't -- I don't know how a blanket -- or excuse
01:15:27 3 me -- a blanket refusal would have worked at Walmart because
01:15:31 4 there wasn't one there, so I don't know how it would have
01:15:33 5 worked.

01:15:34 6 Q. No. I'm saying if there was a blanket refusal to fill, it
01:15:37 7 would work in every Walmart; right?

01:15:38 8 A. Sir, I don't know. Like I said, I do not know how the
01:15:41 9 process would have worked. I don't know if it was going to be
01:15:44 10 blocked in the computer system. That's what you asked me.

01:15:46 11 Q. Okay.

01:15:47 12 A. I don't know that.

01:15:48 13 Q. Well, you had a computer system, didn't you?

01:15:50 14 A. Walmart did.

01:15:52 15 Q. Yeah. The Archer system that you had input to; right?

01:15:58 16 A. No, sir, that is not correct. We did not use Archer to
01:16:01 17 fill prescriptions.

01:16:02 18 Q. Not to fill prescriptions, but didn't you have a computer
01:16:04 19 system that would pull up alerts?

01:16:11 20 A. I'm not sure I understand the question.

01:16:12 21 Q. Okay. It's simple. I'm not doing a good job asking it
01:16:15 22 then. If someone, in 2016, came into a Walmart with a
01:16:21 23 prescription, was that Walmart pharmacist given the tool of a
01:16:27 24 computer with a program so that they could enter that
01:16:30 25 prescription information into the program and pull up

Nelson (Cross by Lanier)

01:16:34 1 information about it?

01:16:39 2 A. If you're talking about the prescription monitoring
01:16:42 3 program, which is, I think, what you're asking me about, that
01:16:45 4 is done outside the prescription filling system.

01:16:49 5 Q. No, sir, I'm talking about --

01:16:52 6 A. -- the internet-based system.

01:16:53 7 Q. The jury heard a lot about Walgreens has a refusal to fill
01:16:59 8 form and information that comes up on their computer screens
01:17:04 9 that Walgreens does or did.

01:17:07 10 Did Walmart have any type of a program that brought up
01:17:12 11 information so that you could tell, for example, if the
01:17:17 12 prescription had already been rejected?

01:17:23 13 A. Not that I'm aware of.

01:17:25 14 Q. Wow. So this person could go into one Walmart store and
01:17:31 15 have their prescription rejected and then just go to another
01:17:35 16 Walmart store with the same prescription and get it filled.

01:17:44 17 A. Like I said, I'm not aware of any system that you could put
01:17:47 18 information in about a prescription that you rejected.

01:17:52 19 Q. Okay. So let's look at another situation. We're over a
01:18:10 20 year after this July 17th date. It's Plaintiffs' Exhibit
01:18:16 21 26736. If you'd pull that, please.

01:18:39 22 Are you able to find it okay?

01:18:40 23 A. Yes, sir.

01:18:42 24 Q. All right. If you'll start on the second page, bottom
01:18:49 25 e-mail, "Hello Michael."

Nelson (Cross by Lanier)

01:18:53 1 Do you see where I'm reading?

01:18:54 2 A. Yes, sir.

01:18:56 3 Q. "Mekeda" -- who by the way I'm assuming is this person
01:19:00 4 that's copied on this e-mail. See? "Mekeda overheard several
01:19:09 5 of Dr. Garfield Samuel's patients complaining outside our
01:19:14 6 pharmacy that he doesn't examine them prior to writing
01:19:22 7 controlled substance Schedule II prescriptions."

01:19:23 8 Do you see that?

01:19:27 9 A. That's what it says.

01:19:28 10 Q. And C-II prescriptions, at this point in time, includes oxy
01:19:33 11 and hydro, among other opiates; right?

01:19:39 12 A. And non-opiates, yes, sir.

01:19:42 13 Q. "This is in addition to the other red flags the prescriber
01:19:46 14 already exhibits, such as his patients coming into the store in
01:19:51 15 clumps on certain days, and with similar prescriptions."

01:19:58 16 Are you reading with me?

01:20:00 17 A. That's what it says, sir.

01:20:02 18 Q. "Previously we had been calling the office and collecting
01:20:06 19 information to verify proper patient prescriber relationship,
01:20:13 20 but now we're concerned this information may be fabricated. We
01:20:17 21 had also been consistently checking the patients' PMPs,"
01:20:22 22 prescription monitoring program.

01:20:23 23 Do you see that?

01:20:25 24 A. Yes, sir.

01:20:27 25 Q. "We're no longer comfortable filling controlled medications

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01:20:31 1 from his office.

01:20:33 2 "Is there a proper way to go about letting our
01:20:37 3 patients know we'll no longer be filling his prescriptions, and
01:20:41 4 how do we handle our long-standing patients? Any guidance is
01:20:46 5 appreciated."

01:20:46 6 Do you see that?

01:20:47 7 A. Yes, sir.

01:20:47 8 Q. And this makes its way to you, and you send a reply, don't
01:20:52 9 you?

01:20:53 10 A. Yes, sir.

01:20:54 11 Q. And in your reply, over a year past the change in policy at
01:20:59 12 Walmart, you said, "Here are best practices for refusing to
01:21:06 13 fill prescriptions. Each prescription must be evaluated
01:21:08 14 individually. Boards of pharmacy do not give the pharmacist
01:21:11 15 the authority to blanket refuse all prescriptions from a
01:21:15 16 prescriber."

01:21:17 17 And then you put in that same cut and paste you put
01:21:19 18 into every e-mail?

01:21:20 19 Do you see that?

01:21:22 20 A. I do.

01:21:30 21 Q. Now, at some point there was a concern about the system
01:21:37 22 y'all had, wasn't there, internally?

01:21:43 23 A. I don't understand the question, the system.

01:21:47 24 Q. Okay. Let me do it this way. I'm going to have -- if
01:21:51 25 you'll pull Plaintiffs' Exhibit 26737.

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01:22:17 1 Do you have it, sir?

01:22:18 2 A. I do.

01:22:20 3 Q. Now, instead of starting just at the bottom, I'm going to
01:22:24 4 start with the most recent e-mail from you because it's
01:22:28 5 important to see what you said. You said, "See my response
01:22:32 6 below. Comments are in blue."

01:22:37 7 Do you see that?

01:22:38 8 A. That's what it says, yes, sir.

01:22:39 9 Q. Now, the copy that we were given doesn't have blue
01:22:45 10 comments, and so we're going to have to try to figure out what
01:22:47 11 are your comments, but I think we can do that pretty well at
01:22:53 12 least for some of them.

01:22:54 13 So now go to the e-mail where you would have inserted
01:22:57 14 your comments. It's from Kevin Matkaiti.

01:23:00 15 Do you see that?

01:23:06 16 A. I see the e-mail, yes.

01:23:07 17 Q. And this is October 4th, so we're well over a year after
01:23:12 18 the POM no longer prohibits blanket refusals.

01:23:16 19 Do you see that as well?

01:23:23 20 A. Yes, sir.

01:23:24 21 Q. All right. "Steve, I've had two interesting conversations
01:23:27 22 with prescribers in the last two days, and I wanted to get
01:23:32 23 your/corporate compliance take on this."

01:23:40 24 Now, you would be corporate compliance; right?

01:23:47 25 A. I was one of the people involved with compliance, but I

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01:23:51 1 certainly do not represent all of corporate compliance.

01:23:51 2 Q. Right. But that's -- that would be if you were talking
01:23:53 3 about this, you would have been talking about it in your role
01:23:57 4 as part of corporate compliance. True?

01:24:02 5 A. That was the pharmacist's opinion, yes.

01:24:05 6 Q. Dr. Number 1, Sharon Johnson. "I called her because I had
01:24:13 7 a patient dropping of a prescription for Percocet and
01:24:22 8 oxycodone."

01:24:22 9 Those are two prescriptions for to different opiates;
01:24:25 10 right?

01:24:30 11 A. Correct.

01:24:30 12 Q. "When I reviewed the prescription monitoring program, I see
01:24:36 13 he hasn't filled any narcotics in the last year other than one
01:24:41 14 prescription for what looks like Percocet the last month."

01:24:47 15 Right?

01:24:47 16 A. That's what it says.

01:24:48 17 Q. "I was curious to know why he's getting such high doses of
01:24:52 18 narcotics with zero history of use, so I went ahead and spoke
01:24:57 19 with the doctor. She said that he was getting high doses of
01:25:01 20 pain medicines from a Dr. Poluhkin, a doctor who has a history
01:25:08 21 of questionable prescribing as well, one and a half to two
01:25:14 22 years ago, which is why she's prescribing this."

01:25:17 23 Do you see that, sir?

01:25:21 24 A. That's what it says.

01:25:22 25 Q. "This is by no means an acceptable response to me and makes

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01:25:25 1 me question any prescription she may prescribe. If a patient's
01:25:29 2 opioid free for that long, she should not be jumping right back
01:25:32 3 in and prescribing high doses like this."

01:25:37 4 So you see that concern of Dr. 1?

01:25:45 5 A. I do see that written in the document.

01:25:46 6 Q. And then it's got Dr. 2, Mary Stahl.

01:25:52 7 Same situation as above. "Patient was given
01:25:56 8 prescription for oxycodone, 5 milligrams at 120 tablets, but
01:25:59 9 had no history of opioid use based on the prescription
01:26:04 10 monitoring program. "

01:26:07 11 Do you see that?

01:26:11 12 A. That's when it says.

01:26:12 13 Q. "I called and spoke to the doctor to establish pain
01:26:16 14 management background. She told me the patient doesn't have
01:26:18 15 any history but told her that she's been taking other people's
01:26:21 16 medication. Again, this is absolutely not a reason to
01:26:23 17 prescribe an opioid medication to a patient and it's careless
01:26:29 18 prescribing in my opinion."

01:26:35 19 Do you see that?

01:26:35 20 A. That is what if says.

01:26:36 21 Q. Now, it looks like it's still the pharmacist here saying,
01:26:39 22 "I never really liked the idea of blanket refusals on certain
01:26:43 23 doctors because they may actually have patients that need pain
01:26:46 24 medication. However, when I call and get answers like these,
01:26:52 25 it puts into question the doctor's competency. I'm not sure I

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01:26:56 1 feel comfortable filling any prescription written by a doctor
01:26:58 2 who thinks it's okay to prescribe this way. Pharmacists have
01:27:02 3 an obligation to ensure that controlled substances are being
01:27:05 4 used and prescribed appropriately. The country's prescription
01:27:09 5 drug abuse problem is well documented and it's prescribers like
01:27:13 6 these that are at the heart of the problem."

01:27:16 7 Do you see that?

01:27:19 8 A. That's that pharmacist's opinion, yes, sir.

01:27:21 9 Q. And then look what else was that Walmart pharmacist's
01:27:25 10 opinion. "We need to have a better system in place to protect
01:27:30 11 us as pharmacists and Walmart as a company from liability
01:27:36 12 associated with this type of prescribing. I don't think
01:27:40 13 pharmacist discretion is enough to protect us."

01:27:45 14 Do you see that?

01:27:47 15 A. Yes, the pharmacist wrote that, yes, sir.

01:27:53 16 Q. And then here are the questions for you in compliance. "Is
01:27:55 17 it okay to blanket refuse for a doctor who we have documented
01:27:58 18 evidence of competency and ethical concerns?"

01:28:02 19 Do you see that?

01:28:06 20 A. Yes, sir.

01:28:07 21 Q. Now, it's not in blue ink, but I'm going to suggest to you
01:28:12 22 that this inserted answer is yours, and you tell me if you
01:28:15 23 think I'm wrong. "At this time there's not an option to
01:28:19 24 blanket refuse any prescriber. Each prescription needs to be
01:28:22 25 evaluated on its own merits. I would agree this Kevin's

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01:28:26 1 decision to not fill these two prescriptions."

01:28:30 2 Do you see that?

01:28:35 3 A. I do see that.

01:28:36 4 Q. Question 2 -- doesn't that look like something you'd have
01:28:40 5 written?

01:28:40 6 A. I -- I honestly don't recall this particular e-mail. I see
01:28:45 7 it's from me, so I don't know where the blue responses start or
01:28:47 8 stop.

01:28:48 9 Q. Well, it continues with Question 2, "Can more be done to
01:28:54 10 protect us as pharmacists and Walmart as a company from
01:28:56 11 liability associated with prescriptions written by negligent
01:29:02 12 prescribers?"

01:29:03 13 And the reply says, "I'm not sure I understand what
01:29:05 14 liability Kevin is talking about; however, evaluating the red
01:29:10 15 flags associated with the prescription is the best way to
01:29:14 16 eliminate filling prescriptions not written for legitimate
01:29:15 17 medical purposes."

01:29:16 18 Do you see that?

01:29:18 19 A. I see that's on the (unintelligible) document, yes, sir.

01:29:21 20 Q. I'm sorry, sir. Thank you.

01:29:23 21 "Can I create my own standardized form to send to the
01:29:26 22 doctor to better protect myself and my staff from liability?

01:29:31 23 "I'd rather have a corporate form, but I'll make my
01:29:34 24 own if needed."

01:29:34 25 And then you've got that information that you seem to

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01:29:38 1 cut and paste so often that includes "O blanket refusals are
01:29:47 2 allowed by the boards of pharmacy."

01:29:49 3 Do you see that as well?

01:29:50 4 A. I don't see that whole thing put in there this time. I
01:29:53 5 just see, "Follow POM 1703 and 1311."

01:29:58 6 Q. Turn to the next page, sir.

01:30:01 7 A. Oh. Okay. I apologize.

01:30:03 8 Q. That's okay. That's -- that's your cut and paste section,
01:30:09 9 isn't it?

01:30:09 10 A. That is true.

01:30:14 11 Q. Now, as we roll into 2017 we're getting near the end of
01:30:23 12 your employment, aren't we?

01:30:27 13 A. That would be -- that's when I left Walmart, yes.

01:30:29 14 Q. You left Walmart when?

01:30:35 15 A. I don't recall the exact date, but I believe it was in
01:30:36 16 March of 2017.

01:30:38 17 Q. Yep. That seems to be consistent with me. I'm going to
01:30:41 18 show you Plaintiffs' Exhibit 8037, and I'll represent --

01:30:48 19 Well, why don't you pull it out and we'll get a copy
01:30:51 20 to counsel.

01:31:07 21 Do you have that in front of you?

01:31:09 22 A. Yes, sir.

01:31:09 23 Q. It's an e-mail you sent February 24th of 2017. You see?

01:31:22 24 A. Yes, sir.

01:31:28 25 Q. If you look at the back, it's talking about some bad

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01:31:31 1 doctors, or bad situation with a store tech, and question, "Can
01:31:39 2 we lobby for a home office blanket refusal for Justin Lamonda
01:31:45 3 so the refusal will show home office support?"

01:31:48 4 Do you see that? It's on Page 3?

01:31:55 5 A. I see it.

01:31:56 6 Q. All right. Then you said, in reply on Page 2, "That will
01:32:04 7 happen automatically if there are enough refusals to fill filed
01:32:09 8 for this prescriber, or multiple blanket refusals filed from
01:32:14 9 multiple locations."

01:32:17 10 So at this point y'all clearly can do a blanket
01:32:21 11 refusal, can't you?

01:32:29 12 A. The document states what it is. I was not involved in the
01:32:32 13 process of determining a blanket refusal, so I don't know all
01:32:35 14 the --

01:32:36 15 Q. Right. But that document saying that is from you?

01:32:40 16 A. That was my understanding of how the process would work.

01:32:43 17 Q. And then you get an e-mail back that says, "Brad, can you
01:32:49 18 look into where we are at refusals to fill for Dr. Lamonda at
01:32:54 19 Store 40. I'm wondering how close we are to getting a home
01:32:57 20 office blanket refusal."

01:33:04 21 So there's a home office blanket refusal to fill
01:33:07 22 available, isn't there?

01:33:12 23 A. I don't believe there's one for that doctor.

01:33:12 24 Q. Right, but the company has an ability to do one in spite of
01:33:16 25 what you may have written two months before; right -- three

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01:33:20 1 months before?

01:33:23 2 A. There was a process being implemented at that time which I
01:33:26 3 was not a part of.

01:33:27 4 Q. Wait. You said that was a process being implemented at
01:33:30 5 that time which I was not a part of?

01:33:33 6 A. Correct, in February of 2017.

01:33:36 7 Q. In fact, you say in the reply to that e-mail on the front,
01:33:42 8 "Josh, you can do that in Archer by putting his DEA number in
01:33:50 9 the search box and hitting enter. I will tell you it takes
01:33:55 10 hundreds of refusals to fill to be considered for a corporate
01:34:01 11 block. It's a huge deal and we only have a handful of DR's --
01:34:10 12 doctors -- that have been issued a corporate block"; correct?

01:34:17 13 A. That is my understanding of the process at the time.

01:34:30 14 Q. But if we go back to Plaintiffs' Exhibit 26736, for
01:34:35 15 example, this was the one you and I just covered, Dr. Sam --
01:34:43 16 Garfield Samuel, where one of the pharmacists overheard the
01:34:50 17 patients complaining outside the pharmacy, "He doesn't examine
01:34:54 18 them prior to writing the prescriptions. This is in addition
01:34:57 19 to other red flags the prescriber already exhibits, such as
01:35:02 20 patients coming in the store in clumps in days with similar
01:35:08 21 prescriptions," et cetera.

01:35:08 22 You see that?

01:35:14 23 A. That's what the document says.

01:35:15 24 Q. Now, there's no way for the Walmart down the street to know
01:35:24 25 the experiences of this Walmart pharmacist, is there?

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01:35:31 1 A. I don't know what you're asking.

01:35:34 2 Q. Well, Mekeda overheard the patients complaining outside the
01:35:38 3 pharmacy that the doctor doesn't examine them prior to writing.

01:35:42 4 Do you see that?

01:35:47 5 A. That's what she says in the e-mail.

01:35:49 6 Q. So let's say Mekeda says I'm not going to fill the
01:35:52 7 prescriptions for the patients because of that, and the
01:35:54 8 patients go down to another Walmart. Other Walmart hadn't
01:35:58 9 heard that conversation, have they?

01:36:02 10 A. I don't know if they heard it or didn't.

01:36:04 11 Q. Well, let's assume that the pharmacist for the other
01:36:08 12 Walmart 5 miles away wasn't also standing in the parking lot of
01:36:13 13 the first Walmart hearing the story. Okay.

01:36:21 14 Are you with me?

01:36:21 15 A. Well, but it's not unusual for pharmacists to contact other
01:36:23 16 pharmacists and tell them what their concerns are, especially
01:36:28 17 our Walmart pharmacy.

01:36:29 18 Q. Right. But if the pharmacist has got no reason for -- I
01:36:32 19 mean, what's the pharmacist going do, say, hey, did you try to
01:36:34 20 fill this at another Walmart pharmacy, and if so, which one so
01:36:39 21 I can call the pharmacist and find out why it was refused?

01:36:44 22 MR. MAJORAS: Objection. Speculation. Hypothetical.

01:36:47 23 THE COURT: Overruled.

01:36:48 24 THE WITNESS: It's certainly not unusual for
01:36:51 25 pharmacists to contact other pharmacy to let them know, hey, I

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01:36:53 1 just refused to fill a prescription for so -- this particular
01:36:57 2 patient. Don't know if they'll try to bring it to you or not,
01:37:02 3 but here was my concerns. That was not unusual, and the
01:37:05 4 pharmacists grapevine, as I will call it, is pretty strong in
01:37:09 5 most communities.

01:37:10 6 Q. So if the pharmacist had time and just started dialing
01:37:12 7 every pharmacy within a radius of however many miles, that
01:37:17 8 might be the only way that the other Walmart pharmacists will
01:37:23 9 know about this. Is that what you're saying?

01:37:25 10 A. Well, sir, from many of the other e-mails that you've
01:37:28 11 provided to me during this deposition, it clearly states I
01:37:32 12 talked to a pharmacist at this store, I talked to somebody at
01:37:35 13 that store, and you saw the e-mail chains from multiple Walmart
01:37:38 14 pharmacists to each other, so I believe they were communicating
01:37:40 15 to each other if they had concerns about a prescription that
01:37:43 16 they rejected.

01:37:45 17 Q. Okay. Just -- okay. So they may have done it in one or
01:37:48 18 two or three or more occasions. Do you think they did it in
01:37:52 19 every one?

01:37:53 20 Let me ask it this way. Was it a Walmart policy when
01:37:57 21 a pharmacist refused to fill a prescription that the pharmacist
01:38:02 22 call every other pharmacist within some geographical range and
01:38:05 23 tell them?

01:38:08 24 Was that a policy?

01:38:09 25 A. I'm not aware of that being in any written policy.

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01:38:11 1 Q. Was it a suggestion that was in writing anywhere?

01:38:17 2 A. Not that I'm aware of.

01:38:21 3 Q. But if you'd put a corporate block in, then any pharmacist

01:38:26 4 in the Walmart system who had access to a computer, they could

01:38:30 5 plug -- run that prescription and know corporate has said don't

01:38:34 6 fill it; right?

01:38:36 7 A. Well, I would not have been the one to put the corporate

01:38:39 8 block in, but if that's -- and I -- again, I do not know how

01:38:43 9 the process was going to work.

01:38:44 10 Q. But that process came into place while you were still

01:38:49 11 there, didn't it?

01:38:52 12 A. I personally did not know of any corporate block that was

01:38:55 13 put on the pharmacists before I -- excuse me, on a physician

01:38:58 14 before I left. I was not involved in that.

01:39:00 15 Q. Well, sir, there were a number of corporate blocks that

01:39:05 16 were put into place before you left. They just didn't start

01:39:09 17 doing it until January of 2017; correct?

01:39:14 18 A. Sir, I don't know.

01:39:15 19 Q. Okay.

01:39:16 20 A. I wasn't involved in that.

01:39:17 21 Q. Look for Plaintiffs' Exhibit 21393.

01:39:40 22 Do you have that in front of you, sir?

01:39:43 23 A. Yes, sir.

01:39:44 24 Q. This is a list of prescribers that were blocked by Walmart

01:39:50 25 as of May 27th of 2020.

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01:39:55 1 You got it?

01:39:58 2 A. Yes, sir, but I have no idea about this.

01:40:01 3 Q. Well, that's -- that's the reason I'm asking you. Because
01:40:06 4 a number of these were blocked while you were still head or one
01:40:11 5 of the guys in corporate compliance. Did you know that?

01:40:19 6 A. I'm telling you I never saw this list before, sir.

01:40:26 7 Q. So you did not know that there was a list out where the
01:40:28 8 company was finally putting corporate blocks on people?

01:40:31 9 MR. MAJORAS: Objection. Foundation on this 2020
01:40:33 10 document.

01:40:33 11 MR. LANIER: Judge, this is his area and this was
01:40:36 12 his --

01:40:36 13 THE COURT: Well -- well, it's three years after he
01:40:39 14 left, so sustained.

01:40:40 15 MR. LANIER: Okay. But, Your Honor, what I would like
01:40:43 16 to ask him of is this sense: So, for example, Harold Budhram,
01:40:49 17 B-u-d-h-r-a-m, he was blocked January 23rd, 2017. That's while
01:40:58 18 you were still there, wasn't he? Did you know about him?

01:41:06 19 THE WITNESS: What was that doctor's name again, sir?

01:41:08 20 BY MR. LANIER:

01:41:08 21 Q. His name was Harold Budhram, B-u-d-h-r-a-m, blocked
01:41:17 22 January 23rd, 2017?

01:41:33 23 A. Sir, I never had a list of any kind which showed me which
01:41:35 24 doctors were blocked.

01:41:36 25 Q. Did you know about Jason Brajer being block while you were

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01:41:41 1 still at the company, February 10th, 2017, spelled B-r-a-j-e-r?

01:41:52 2 A. As I stated just a moment ago, I was never provided a list
01:41:54 3 of folks that were blocked, corporate politics, so I don't
01:41:59 4 know.

01:41:59 5 Q. But my question is -- my question is different than that.

01:42:02 6 It's not did you get a list. My question is do you know about
01:42:06 7 these people being blocked? Did you know about Dr. Frank
01:42:09 8 Bynes, B-y-n-e-s, being blocked January 16th, 2017, while
01:42:14 9 you're still at the company?

01:42:17 10 A. Not that I recall, sir.

01:42:24 11 Q. Did you know Dr. Horace Davis being blocked while you were
01:42:28 12 still at the company on January 23rd, 2017?

01:42:39 13 A. Again, not that I recall. I don't recall knowing of
01:42:40 14 physicians that had corporate blocks.

01:42:42 15 Q. Dr. Rasean, R-a-s-e-a-n, Hodge, blocked January 26th, 2017,
01:42:51 16 while you were still at the company. Did you know about that
01:42:53 17 doctor?

01:43:02 18 A. I do not recall.

01:43:02 19 Q. And instead of going through the rest of these that were
01:43:05 20 blocked while you were still at the company, I want to ask you
01:43:07 21 a different set of questions. There are a number of Ohio
01:43:13 22 doctors that the company, I believe, will get testimony from
01:43:17 23 later witnesses, the company ultimately blocked with a refusal
01:43:21 24 to fill. If those doctors -- I'd like to ask you their names
01:43:27 25 with a representation to you that there were complaints about

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01:43:30 1 these doctors even while you were there.

01:43:33 2 MR. MAJORAS: Objection to this leading the testimony.

01:43:37 3 THE COURT: Well, let's hear the question first.

01:43:39 4 BY MR. LANIER:

01:43:39 5 Q. Yeah.

01:43:39 6 My question is going to be this: With that
01:43:42 7 representation being made, do you have any memory of any of
01:43:48 8 these doctors and whether or not you stopped a blanket refusal
01:43:54 9 to fill earlier? One --

01:44:01 10 A. Sir, given the fact that Ohio was not my particular area of
01:44:06 11 supervision, it's very possible that someone could have sent me
01:44:09 12 an e-mail regarding a particular physician that at a later date
01:44:14 13 had a blanket refusal or, excuse me, had a blanket prescriber
01:44:18 14 block add to them. I don't recall specifically any one of
01:44:21 15 those doctors and certainly didn't have access to a list.

01:44:25 16 Q. Well, let me give you Plaintiffs' Exhibit 26890.

01:44:56 17 Do you have that document, sir?

01:44:57 18 A. I do.

01:45:00 19 Q. This is an e-mail to you dealing with an Ohio doctor.

01:45:06 20 You're Brad Nelson, aren't you?

01:45:12 21 A. Yes, sir.

01:45:13 22 Q. If you look on Page 2 it seems Dr. Lalli is evolving. "I
01:45:21 23 just had a patient call for Norco from Dr. Lalli, along with
01:45:26 24 her Soma and Valium." That's the trinity cocktail, isn't it?

01:45:31 25 A. That is one of the cocktail, yes.

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01:45:33 1 Q. "I know I can't tell the patients we don't fill for him, so
01:45:36 2 we've been filling some medications that are not the chronic
01:45:40 3 use of acute medication. But this means we've been filling
01:45:45 4 controls from him, such as Adderall. Of course this is after
01:45:49 5 an OARRS report. We even had one patient go as far as having
01:45:54 6 his Percocet changed to oxycodone to get around the chronic use
01:45:59 7 of an acute medication. We filled it because this patient also
01:46:05 8 sat and told me he'd been compiling a list of everyone,
01:46:09 9 pharmacist and pharmacy, who's refusing to fill his medications
01:46:12 10 and going back to Dr. Lalli with it."

01:46:15 11 Do you see that, sir?

01:46:21 12 A. That's what the document says.

01:46:22 13 Q. And this is from Cleveland, Ohio.

01:46:23 14 Do you see that as well?

01:46:29 15 A. That's what it says.

01:46:29 16 Q. And you're the one who gets the reply out on this, don't
01:46:35 17 you?

01:46:39 18 A. That's -- Mark Miller sent it to me.

01:46:43 19 Q. Yep. And you sent back your cut and paste with your usual
01:46:47 20 language.

01:46:47 21 Do you see that?

01:46:49 22 A. Yes, sir.

01:46:51 23 Q. So my question to you, recognizing that you have had input
01:46:55 24 in Ohio doctors and problems with them, is whether or not these
01:47:00 25 names ring a bell as anybody you had ever had come across your

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01:47:06 1 radar screen. Okay.

01:47:09 2 Doctor David Demangone, D-e-m-a-n-g-o-n-e.

01:47:17 3 Ring a bell?

01:47:19 4 A. Does not.

01:47:22 5 Q. Dr. Martin Escobar, E-s-c-o-b-a-r. Ring a bell?

01:47:30 6 A. It does not.

01:47:34 7 Q. Dr. Frank Lazzerini, L-a-z-z-e-r-i-n-i. Ring a bell?

01:47:45 8 A. It does not.

01:47:48 9 Q. James Prommersberger, P-r-o-m-m-e-r-s-b-e-r-g-e-r. Ring a
01:47:58 10 bell?

01:47:59 11 A. It does not.

01:48:02 12 Q. Dr. Frank Veres, V-e-r-e-s. Ring a bell?

01:48:10 13 A. It does not.

01:48:20 14 MR. LANIER: Your Honor, thank you for this time.

01:48:23 15 Mr. Nelson, thank you for this time. That ends
01:48:28 16 policies and actions. We've come to the end of the road, and
01:48:30 17 I'll pass the witness.

01:48:32 18 THE COURT: All right. Mr. Majoras, you are up if you
01:48:38 19 want.

01:48:40 20 MR. MAJORAS: Thank you, Your Honor. If I could just
01:48:42 21 have a moment.

01:48:46 22 MR. LANIER: Your Honor, I took a COVID test and I'm
01:48:48 23 negative. I've got some other cold, but I would definitely
01:48:52 24 urge everyone to -- I've been spitting up here, not on purpose,
01:48:55 25 but I'd urge someone to --

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01:48:56 1 THE COURT: Okay. I'll ask Mr. Pitts to clean.

01:49:01 2 MR. LANIER: And I'm glad to do it myself, but --

01:49:05 3 THE COURT: Okay. I'll have Mr. Pitts do it. That's

01:49:08 4 fine

01:49:08 5 MR. MAJORAS: Okay. I appreciate Mr. Pitts doing

01:49:10 6 that. Thank you.

01:50:44 7 (Brief pause in proceedings).

01:50:45 8 MR. MAJORAS: Thank you, Mr. Pitts.

01:51:09 9 I apologize in advance for everyone's ears.

01:51:20 10 May I proceed, Your Honor?

01:51:22 11 THE COURT: Yes, Mr. Majoras.

01:51:24 12 MR. MAJORAS: Good afternoon, folks.

01:51:24 13 DIRECT EXAMINATION OF BRAD NELSON

01:51:26 14 BY MR. MAJORAS:

01:51:26 15 Q. Good afternoon, Mr. Nelson. I'm used to looking at a

01:51:29 16 witness stand, so I'll be looking down at where I can see you

01:51:34 17 on a screen. If for any reason you're having any difficulty

01:51:36 18 hearing me, please let me know. I'll be happy to rephrase or

01:51:38 19 restart a question.

01:51:38 20 Can you hear me okay?

01:51:39 21 A. I can hear you great.

01:51:40 22 Q. Okay. I'm going to -- you and I have not met before, have

01:51:43 23 we?

01:51:44 24 A. Not that I'm aware of.

01:51:45 25 Q. My name is John Majoras. I'm one of the lawyers for

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01:51:48 1 Walmart, and I'm going to jump around just a little bit in
01:51:52 2 terms of some questions I have for you so if I lose track of
01:51:56 3 you somewhere, just please let me know and I'll start over.

01:51:59 4 Okay?

01:52:00 5 A. Yes, sir.

01:52:03 6 Q. I want to get a little bit of your back -- a little bit
01:52:05 7 more of your background than we heard earlier. And I'm talking
01:52:11 8 specifically about when you were the senior -- when you were
01:52:13 9 one of the senior managers of controlled substances. You were
01:52:18 10 not the only one in that position at Walmart, were you?

01:52:21 11 A. At one point when the position was first created in 2011, I
01:52:25 12 was the first person put in that role and then two additional
01:52:29 13 resources were added to it. I believe one 2012 and one in
01:52:34 14 2013.

01:52:35 15 Q. And when you refer to resources, you're talking
01:52:37 16 specifically about two other individuals; right?

01:52:41 17 A. Two individuals were added as well as some supportive
01:52:45 18 hourly staff.

01:52:45 19 Q. So the two other people in the similar position to you
01:52:51 20 after a year or so since you've been in was Ms. Shelley
01:52:55 21 Tustison; is that correct?

01:52:56 22 A. Shelley was the first one added in 2012.

01:52:59 23 Q. And then the second was Caroline Riogi; correct?

01:53:02 24 A. That is correct. I believe she came on in 2013.

01:53:05 25 Q. And when the three of you were in your positions, how did

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01:53:09 1 you divide up your responsibilities?

01:53:12 2 A. It was divided up geographically by boards of pharmacy
01:53:20 3 jurisdictions, if you will, and so we had three directors that
01:53:24 4 oversaw the various states and so we just aligned with each one
01:53:27 5 of those directors.

01:53:28 6 Q. So when you talk about boards of pharmacies, those are all
01:53:32 7 state level organizations?

01:53:34 8 A. To the best of my knowledge with the exception of
01:53:36 9 Washington, D.C.

01:53:38 10 Q. Okay. Do you recall which states you were responsible for?

01:53:45 11 A. I -- I remember most of them, but I would hate to provide
01:53:49 12 you a list because I'd probably forget one, but generally
01:53:52 13 speaking it was from Florida up to the Central Plains of the
01:53:55 14 United States, including Indiana, Michigan -- excuse me, not
01:54:00 15 Michigan -- but Montana and Minnesota, as I recall.

01:54:03 16 Q. And I believe you told Mr. Lanier that Ohio was not one of
01:54:05 17 your states for which you were responsible; right?

01:54:09 18 A. That is correct, although I would answer questions from
01:54:13 19 time to time.

01:54:13 20 Q. Okay. And who had the responsibility, when you had the
01:54:16 21 three people in that position, who had responsibility for Ohio?

01:54:20 22 A. My recollection was that was Caroline Riogi and Rick Irby.

01:54:26 23 Q. And so when Mr. Lanier read you a number of names of Ohio
01:54:29 24 doctors, is it surprising to you that you weren't familiar with
01:54:32 25 them?

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01:54:36 1 A. In most situations I would not have recalled the specific
01:54:41 2 doctor involved. My responsibility was to provide information
01:54:41 3 to the pharmacists so they could make their decision. It
01:54:43 4 wasn't to digest the individual doctor name.

01:54:47 5 Q. So during the period from -- when Ms. Riogi joined the
01:54:52 6 position at Walmart until the time that you left Walmart, was
01:54:56 7 she principally responsible for Ohic?

01:55:04 8 A. That's my recollection.

01:55:05 9 Q. Okay. I'm going to switch topics here for a moment.

01:55:07 10 Mr. Lanier spoke to you about some language that he
01:55:09 11 referred to from time to time as a mantra or a cut and paste.
01:55:14 12 And you're familiar with that now -- by now, aren't you?

01:55:17 13 A. Yes, sir.

01:55:17 14 Q. So when you provided that information in response to
01:55:21 15 questions, why were you doing that?

01:55:21 16 A. I --

01:55:28 17 Q. And by questions, I mean -- I'm sorry to interrupt. By
01:55:31 18 questions, I don't mean Mr. Lanier's questions, I mean, when
01:55:34 19 people while you were in your job were asking you questions,
01:55:36 20 why did you provide that information to them?

01:55:40 21 A. Well, it was our decision to send out that information so
01:55:43 22 we were all getting out consistent information irregardless of
01:55:47 23 what area of the country would send in a request, they wanted
01:55:50 24 to make sure we referred them to the policies and procedures
01:55:53 25 and best practices.

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01:55:54 1 Q. And do those policies and procedures that were part of that
01:55:58 2 information include how pharmacists were to go about their
01:56:01 3 decisions and whether to fill prescriptions?

01:56:04 4 A. It certainly gave them plenty of information with regards
01:56:07 5 to determining a valid patient relationship, determining a
01:56:12 6 professional judgment of the pharmacist, evaluation of red
01:56:14 7 flags and what to do in the case if they determined that the
01:56:19 8 prescription was not legitimate.

01:56:20 9 Q. And where would that information be found?

01:56:23 10 A. In the POMs.

01:56:25 11 Q. So the POMs are the procedural -- I'm sorry. Even I got it
01:56:28 12 wrong. The pharmacy operations manual?

01:56:32 13 A. That is correct.

01:56:33 14 Q. And those are -- a number of those are the numbers that you
01:56:38 15 referred to in that information that Mr. Lanier refers to as
01:56:40 16 your mantra or cut and paste; correct?

01:56:43 17 A. That is correct.

01:56:44 18 Q. Let's take a closer look at that if you would, please, and
01:56:47 19 I'm going to ask you to pull up a document that Mr. Lanier used
01:56:50 20 with you, which is Plaintiffs' Exhibit 14643. It would have
01:56:54 21 been early in the process if you have them stacked.

01:56:58 22 A. I do have them stacked. 14643?

01:57:01 23 Q. Yes, sir.

01:57:03 24 A. Okay. I have it.

01:57:05 25 Q. And we'll also have it up on the screen so if it's easier

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01:57:10 1 to see there, but either way you want to look at it.

01:57:13 2 Just to refresh everyone's recollection, this was an
01:57:15 3 e-mail from you to Mr. John Smasal dated January 28th, 2013;
01:57:24 4 correct?

01:57:24 5 A. Correct.

01:57:26 6 Q. So I want to look in that first paragraph, which it's a
01:57:28 7 fair amount of information, but I want to focus in particular
01:57:30 8 on something that Mr. Lanier did not read into the record.

01:57:34 9 Do you recall that he asked you about the company's
01:57:37 10 policies on blanket refusals to fill?

01:57:41 11 A. Several times.

01:57:42 12 Q. And -- and, in fact, on this particular one, I'll remind
01:57:45 13 you, he read the language about blanket refusals to fill in
01:57:48 14 that first paragraph.

01:57:49 15 Do you recall that?

01:57:51 16 A. Yes, sir.

01:57:52 17 Q. So now I'd like to direct your attention though to about
01:57:55 18 middle of that first paragraph, the sentence begins, "One of
01:57:59 19 the biggest mistakes."

01:58:02 20 Do you see where I am? It's on the screen in front of
01:58:06 21 you if you can see that.

01:58:07 22 A. Yes, sir, I see it.

01:58:08 23 Q. Okay. And then I'm going to take that all the way down to
01:58:11 24 where Mr. Lanier was reading about blanket refusals to fill, so
01:58:16 25 about four lines below that and it ends with "medical reasons."

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01:58:24 1 A. Okay.

01:58:25 2 Q. So rather than me do the reading, I'm going to ask you if
01:58:27 3 would you please read into the record this part of the material
01:58:32 4 that you were sending consistently in response to questions.

01:58:37 5 A. "One of the biggest mistakes the pharmacist makes is the
01:58:40 6 belief that they're required to fill a prescription from the
01:58:43 7 prescriber once they have called and established that the
01:58:46 8 prescription was written by the prescriber. That is not true.
01:58:49 9 The pharmacist is still able to refuse to fill a prescription
01:58:54 10 even after contacting the prescriber's office. If they choose
01:58:58 11 not to fill a prescription, they must follow POM 1703 for
01:59:03 12 refusal to fill and fraudulent prescriptions. Pharmacists are
01:59:07 13 encouraged to use -- to exercise their professional judgment
01:59:10 14 and refuse to fill prescriptions when they feel a prescription
01:59:13 15 is being written for other than legitimate medical reasons."

01:59:18 16 Q. So when you get questions from pharmacists in the field or
01:59:21 17 perhaps a pharmacist -- pharmacy manager about how a pharmacist
01:59:25 18 should treat information on a prescription, what is your advice
01:59:29 19 to that pharmacist?

01:59:33 20 A. Exercise their professional judgment, use all the
01:59:36 21 information available to them and the tools available to them
01:59:39 22 to determine whether or not they're comfortable filling a
01:59:42 23 prescription, and if not, they should refuse to fill the
01:59:45 24 prescription and create the documentation.

01:59:47 25 Q. Have you ever provided any advice to a pharmacist that if

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01:59:51 1 they were uncomfortable in filling a prescription they should
01:59:54 2 go ahead and fill it anyway?

01:59:56 3 A. Not that I am aware of. I certainly don't recall that.

02:00:05 4 Q. I'd like now to refer you to a document which is in the
02:00:12 5 binder that you would have from the defendants, from Walmart, I
02:00:17 6 believe. It's a binder with tabs. It goes all the way up to
02:00:19 7 Tab 20.

02:00:20 8 Do you have that, sir?

02:00:23 9 A. I have one that has Tab 1 through 5.

02:00:26 10 MR. LANIER: Your Honor, if they were going to use
02:00:28 11 documents --

02:00:28 12 THE COURT: I agree. They should be -- should have
02:00:30 13 been or should not be --

02:00:34 14 MR. MAJORAS: This was placed on our exhibit list last
02:00:36 15 evening. The document exhibit is Walmart MDL 01575.

02:00:45 16 MR. LANIER: Your Honor, they were supposed to give us
02:00:46 17 a list of any documents they would use with this witness last
02:00:50 18 night under the rules.

02:00:51 19 MR. MAJORAS: Your Honor, this is direct --

02:00:53 20 cross-examination responding to what Mr. Lanier brought up on
02:00:56 21 his direct examination.

02:01:13 22 MR. LANIER: I mean, Your Honor, I don't know if you
02:01:35 23 want me to make my objections --

02:01:38 24 THE COURT: All right. We'll go on the headphones.

02:01:54 25 (At sidebar at 2:01 p.m.)

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02:01:54 1 MR. LANIER: Your Honor, this morning I made note, I
02:01:57 2 went over to the table and I said, y'all never gave us a list
02:02:00 3 of documents that you might use in direct on your witness. I
02:02:05 4 said I assume from that you're not going to be using any, I
02:02:08 5 mean, you know, and it was an, uh, shucks, uh, shucks.

02:02:12 6 The reason the provision was put into place that we've
02:02:15 7 adhered to every day of giving documents that we'll use on our
02:02:19 8 witnesses in direct is for this very reason. So if you look at
02:02:24 9 this, for example, the first thing that jumps out at you is
02:02:28 10 there's an e-mail from William Dunn to Brad Nelson. I don't
02:02:34 11 have any clue who William Dunn is, but it's clearly hearsay,
02:02:38 12 and I don't understand even remotely. So he got an e-mail from
02:02:41 13 this guy named William Dunn. I've had no chance to prepare my
02:02:45 14 objections to it, but it's hearsay, and he's just setting it
02:02:50 15 down in front, and what's particularly aggravating is he's been
02:02:54 16 given a notebook, evidently, of exhibits last night.

02:02:57 17 THE COURT: Well, I want to -- I want to find out if
02:03:00 18 these documents were identified, Mr. Majoras, for the
02:03:06 19 plaintiffs that you were planning to use with Mr. Nelson.

02:03:08 20 MR. MAJORAS: I did not identify specifically last
02:03:10 21 evening these documents would be used with Mr. Nelson. I
02:03:13 22 believe that this goes directly to the cross-examination -- or
02:03:17 23 the direct examination that Mr. Lanier put on and I'm in
02:03:20 24 cross-examination mode. These aren't your issues.

02:03:23 25 THE COURT: No. No. This is not cross-examination.

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02:03:25 1 We went through this and this is really direct. He's your
02:03:29 2 witness. So these should have been provided.

02:03:40 3 MR. LANIER: I mean, so this is clearly hearsay.

02:03:42 4 Evidently it was added to their exhibit list, though not
02:03:46 5 singled out to be used but at 11:45 last night, and, I mean,
02:03:52 6 this is -- this is ambush.

02:03:56 7 THE COURT: I mean, we knew Mr. Nelson was going to be
02:03:58 8 called today several days ago, I mean, over a week ago. We've
02:04:04 9 set aside today for that.

02:04:08 10 MR. MAJORAS: And I'm getting their information last
02:04:10 11 night in terms of what their exam is going to be, and I've got
02:04:12 12 to form their response to that.

02:04:14 13 MR. LANIER: No, no, no. Ours was cross-examination.
02:04:16 14 We did not give you any info last night for cross-examination.
02:04:19 15 Cross-examination you're not required to. So this is not, gee,
02:04:22 16 you got ours and you're responding. This isn't at all. All
02:04:25 17 we -- all I did is I took the documents that were late produced
02:04:28 18 to us and I used those ones that had Nelson's name on them.

02:04:33 19 THE COURT: Those were the only ones that --

02:04:35 20 MR. LANIER: That's all I used.

02:04:37 21 MR. MAJORAS: No. Mr. Lanier -- the majority of his
02:04:40 22 documents were not late produced documents, the majority --

02:04:43 23 MR. LANIER: Absolutely were. Oh, no. Oh, no.

02:04:45 24 MR. MAJORAS: We'd be happy to provide the Court
02:04:48 25 information on that one, Your Honor.

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02:04:49 1 MR. LANIER: Yeah, I would too.

02:04:50 2 THE COURT: All right. Everyone's just using up --
02:04:52 3 this is all Walmart's time. I don't -- you know -- how many --
02:04:59 4 how many documents are you going to use, Mr. Majoras, that you
02:05:02 5 didn't identify? I mean, yes, this is hearsay. It did go to
02:05:05 6 him. Maybe he remembers it; maybe not. I --

02:05:09 7 MR. MAJORAS: No more than the hearsay we've been
02:05:12 8 hearing throughout this examination, Your Honor, but this I
02:05:16 9 believe is the only document that was not used in his exam
02:05:18 10 earlier that I plan to use.

02:05:20 11 THE COURT: Well, all right. I'll -- I will allow
02:05:22 12 you -- that's -- on that representation, I'll allow you to show
02:05:26 13 this witness the document. If he remembers it, before you read
02:05:30 14 it to anyone, if he remembers it then -- then you can ask him
02:05:38 15 about it. If he doesn't, then you got to move on.

02:05:40 16 MR. MAJORAS: Okay. Thank you.

02:05:42 17 MR. LANIER: Thank you, Judge.

02:05:42 18 (In open court at 2:05 p.m.)

02:05:42 19 BY MR. MAJORAS:

02:06:05 20 Q. So, Mr. Nelson, what I'm going to ask you to do is take
02:06:08 21 your binder with the five documents and turn to Tab 5 to the
02:06:12 22 binder. I'm not going to ask you do anything in terms of
02:06:14 23 reading it out loud just yet.

02:06:18 24 For the record, this is Walmart Exhibit 01575.

02:06:23 25 Do you see that sticker on your document so that we're

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02:06:26 1 looking at the same thing, sir?

02:06:27 2 A. I do.

02:06:28 3 Q. Okay. If you would just read to yourself, it's a two-part
02:06:33 4 e-mail, just read the bottom e-mail and the top e-mail to
02:06:36 5 yourself. My first question to you is simply do you recall
02:06:41 6 this document.

02:06:57 7 A. It doesn't immediately ring any bells.

02:07:05 8 Q. Do you know who Mr. Williams Dunn is?

02:07:15 9 A. I don't have any recollection of Mr. Dunn.

02:07:16 10 Q. Do you recall Mr. Dunn talking about an investigation of a
02:07:22 11 complaint that was made about his Walmart store in --

02:07:26 12 MR. LANIER: Objection.

02:07:27 13 THE COURT: Sustained.

02:07:34 14 MR. MAJORAS: Okay.

02:07:36 15 BY MR. MAJORAS:

02:07:38 16 Q. Mr. Nelson, go ahead and put that aside. So keeping in
02:07:40 17 mind about the information what a pharmacist should do with an
02:07:45 18 individual prescription. If a pharmacist were confronted with
02:07:48 19 multiple prescriptions from a particular prescriber, what is
02:07:50 20 the process that pharmacist should do under Walmart policies
02:07:55 21 when you were there prior to 2017?

02:08:02 22 A. They should have been guided by using the POMs to determine
02:08:04 23 whether or not the prescription was written for legitimate
02:08:10 24 medical purposes by getting with the patient and the
02:08:16 25 prescriber, using the prescription monitoring programs and

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02:08:18 1 their experience as to determine whether or not there was some
02:08:21 2 reason that would spark red flags that couldn't be resolved and
02:08:28 3 then decide whether they should fill the prescription or not.

02:08:31 4 Q. And if they had information from their own experience in
02:08:34 5 terms of what they had seen or heard at their store about a
02:08:37 6 prescriber, could they factor that into their analysis in using
02:08:42 7 professional judgment?

02:08:44 8 A. I would assume they would do that.

02:08:45 9 Q. You would expect it, wouldn't you?

02:08:47 10 A. I would do that if it was me.

02:08:49 11 Q. Sir, if a pharmacist were -- again, back to what I started.
02:08:54 12 If a pharmacist had multiple prescriptions from a prescriber
02:08:58 13 about which that pharmacist had some doubt, how should that
02:09:01 14 pharmacist treat each individual prescription?

02:09:05 15 A. They should evaluate each prescription based on the way
02:09:08 16 it's written and what the particular patient's needs were and
02:09:11 17 then based on their professional judgment determine whether
02:09:15 18 they should fill or not fill that prescription.

02:09:18 19 Q. And --

02:09:18 20 A. Whether it's one prescription or six.

02:09:20 21 Q. And did -- and was there any policy in place that you had,
02:09:23 22 or that you advised pharmacists about, concerning whether or
02:09:27 23 not they could refuse multiple prescriptions from the same
02:09:29 24 doctor?

02:09:32 25 A. I am not aware of a policy that stated they could refuse

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02:09:36 1 multiple prescriptions at one time other than evaluating them
02:09:39 2 one at a time.

02:09:41 3 Q. And once a pharmacist did refuse to fill a prescription,
02:09:44 4 what was the procedure that pharmacist should do?

02:09:49 5 A. The outline of 1703, that POM requested them and required
02:09:53 6 them to fill out a refusal to fill documentation form, it was a
02:09:58 7 web form.

02:09:59 8 Q. Okay. Let's break that down a little bit. Whether you say
02:10:02 9 a refusal to fill documents form, for those of us who don't
02:10:05 10 work at Walmart, what do you mean?

02:10:06 11 A. It was a document that they had access to through their
02:10:11 12 computer system, it was a web-based, in other words,
02:10:18 13 internet-based and it would fill out this document, and once
02:10:20 14 they were complete with the document they would transmit it and
02:10:23 15 it was sent up to the home office.

02:10:25 16 Q. And why did you want that?

02:10:27 17 A. That document was requested to be sent to the DEA and we
02:10:33 18 compiled that information and sent it to the DEA on a daily
02:10:36 19 basis.

02:10:36 20 Q. What was your specific role in sending Walmart's refusal to
02:10:40 21 fill documentation to the DEA?

02:10:45 22 A. Each morning when I arrived at the office there would be an
02:10:49 23 inbox where all these web forms came to. There was a process
02:10:54 24 where that web -- those web forms were converted to an Excel
02:10:58 25 spreadsheet. I sorted the Excel spreadsheet by state or

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02:11:02 1 actually by DEA region and then would fax a copy of the refusal
02:11:09 2 to fill that came from that particular DEA's jurisdiction to
02:11:13 3 them on a daily basis.

02:11:16 4 Q. And did you ever have any contact with the DEA about
02:11:19 5 refusals to fill, other than what you just described?

02:11:24 6 A. Occasionally the DEA offices that we sent the information
02:11:28 7 to would contact us and request additional information or want
02:11:34 8 to talk to the pharmacist.

02:11:36 9 Q. And what was your policy in responding to the DEA when you
02:11:38 10 got requests?

02:11:41 11 A. Cooperate with them and provide what information they
02:11:43 12 needed.

02:11:44 13 Q. And what about if they had -- did any ask you to get in
02:11:47 14 touch with the individual pharmacist?

02:11:50 15 A. Occasionally that would occur.

02:11:52 16 Q. And what would you do in that case, situation?

02:11:57 17 A. My recollection was that each DEA agent acted a little bit
02:12:04 18 differently, but most of the time it was, will you please
02:12:06 19 contact this pharmacist and give them my contact information
02:12:10 20 because when they show up at a store it generally alarms the
02:12:13 21 pharmacist, and that was not their intent, they generally want
02:12:15 22 to just speak to them about the particular prescriber or the
02:12:20 23 particular patient.

02:12:23 24 Q. I'm going to switch gears again. Mr. Lanier asked you
02:12:26 25 questions about information in the Archer system.

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02:12:29 1 Do you recall that?

02:12:31 2 A. Yes, sir.

02:12:32 3 Q. The Archer system is one of the names that Walmart has had
02:12:35 4 over time for its systems that were made available within the
02:12:39 5 health and wellness division?

02:12:42 6 A. That is correct.

02:12:44 7 Q. And there may have been some confusion over whether it was
02:12:49 8 a blanket refusal to fill or a corporate, but I'm going to ask
02:12:52 9 you to pull out an exhibit he showed you which is plaintiffs'
02:12:55 10 08037.

02:13:05 11 A. Yes, sir. I have that.

02:13:07 12 Q. So if you look -- if you look at the -- the top of the
02:13:11 13 second page, which is the e-mail to you from Mr. Billings, and
02:13:16 14 at the top, the very first question he asked you, "Can you look
02:13:19 15 into where we are at with RTS for Lamonda at Store 40?"

02:13:23 16 Do you see that, sir?

02:13:25 17 A. I do.

02:13:26 18 Q. And you respond, "Josh" -- back on the first page -- "Josh,
02:13:30 19 you can do that in Archer by putting his DEA number in the
02:13:34 20 search box and hitting enter."

02:13:37 21 Do you see that?

02:13:39 22 A. I do.

02:13:39 23 Q. And when you say by -- you can do that, what are you --
02:13:42 24 what are you telling him he could find out if he puts the DEA
02:13:45 25 number in Archer?

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02:13:48 1 A. As I recall, it would bring up all of the refusal to fills
02:13:52 2 that were reported for that particular DEA number from all the
02:13:55 3 Walmart pharmacies.

02:13:57 4 Q. So the refusals to fill would be the individual
02:14:00 5 prescriptions that a pharmacist, using their judgment, decided
02:14:04 6 not to fill; is that right?

02:14:07 7 A. Yeah. I guess I don't want to call them prescriptions, I
02:14:10 8 want to call them individual items that the pharmacist chose
02:14:14 9 not to fill because I don't want to call them a prescription if
02:14:18 10 they're not filled.

02:14:18 11 Q. Okay. But these were an attempt by someone to come to the
02:14:21 12 pharmacy to fill what they purported to believe was a
02:14:25 13 prescription. Is that fair?

02:14:26 14 A. That is correct.

02:14:27 15 Q. Okay. And is it your understanding, as you recall back to
02:14:32 16 your time at Walmart and Archer, that one can view the
02:14:37 17 different refusals to fill that Walmart had in its system
02:14:40 18 through the Archer system?

02:14:45 19 A. Sir, that did become available at some point in time, but I
02:14:49 20 do not recall the exact date.

02:14:50 21 Q. Okay. When lawyers are searching for documents it means
02:15:11 22 I'm almost done, so that's good news for all of us.

02:15:13 23 Mr. Nelson, thinking back to your time, and in
02:15:18 24 particular as you responded to questions from pharmacists and
02:15:22 25 pharmacy directors, how did you go about your job in trying to

Nelson (Direct by Majoras)

02:15:27 1 respond to that? What was your guiding principle?

02:15:32 2 A. I viewed myself as a resource to provide information and
02:15:36 3 clarity on policies and procedures that were available to us at
02:15:40 4 Walmart.

02:15:42 5 Q. And in terms of communicating that to the people who asked
02:15:46 6 you questions, what was your goal in those communications?

02:15:54 7 A. To give consistent information that was accurate, and it
02:15:58 8 would guide the pharmacists and the market directors and
02:16:01 9 regional managers into filling prescriptions that were
02:16:06 10 legitimate and for refusing to fill prescriptions that they
02:16:09 11 felt were not legitimate by a prescriber.

02:16:14 12 Q. Mr. Nelson, just as a reminder I think it may have come up
02:16:19 13 earlier in the trial, but you're actually a trained pharmacist;
02:16:22 14 correct?

02:16:22 15 A. That is correct.

02:16:25 16 MR. MAJORAS: Thank you, sir. I have no further
02:16:26 17 questions at this time.

02:16:28 18 THE COURT: Okay. If any of the jurors have questions
02:16:33 19 that they wish posed to Mr. Nelson, if you could please write
02:16:36 20 them down, give them to Mr. Pitts and we'll show them to
02:16:40 21 counsel.

02:16:55 22 (Brief pause in proceedings).

02:19:14 23 MR. LANIER: Mr. Nelson --

02:19:16 24 THE WITNESS: Yes, sir.

02:19:18 25 MR. LANIER: Let me grab one more thing.

Nelson (Recross by Lanier) —

02:19:18 1 RECROSS-EXAMINATION OF BRAD NELSON

02:19:24 2 BY MR. LANIER:

02:19:24 3 Q. I don't have a lot of questions for you. The jury has a
02:19:29 4 number of questions for you, so I'm going to put them on the
02:19:32 5 screen so that you can more easily see them and I'll read them
02:19:36 6 out loud because they've got to go into the record, though,
02:19:40 7 obviously, we can all read it once it's on the screen, but this
02:19:42 8 way they're read into the record.

02:19:46 9 "If Caroline Riogi was out of the office or on
02:19:50 10 vacation, who would handle her regions?"

02:19:59 11 A. It was our practice at that time if one of the senior
02:20:01 12 directors or managers was out of the office, they would leave
02:20:03 13 an out-of-office response saying, "Please contact
02:20:09 14 Shelley Tustison or Brad Nelson." It just depended upon
02:20:12 15 whoever would have made a request of at that time.

02:20:19 16 Q. And in that regard, I had a couple of questions that I was
02:20:21 17 going to ask you about Ms. Riogi and Ms. Tustison, so I'll
02:20:27 18 throw them in here because they make sense with the juror's
02:20:30 19 question.

02:20:30 20 Do you know what kind of training they had before they
02:20:32 21 took their jobs?

02:20:36 22 A. Well, they were both registered pharmacists and they worked
02:20:40 23 as pharmacy managers at their prospective locations before they
02:20:45 24 were -- before they applied for and were promoted to this
02:20:50 25 position. After they got in their role, they spent time with

Nelson (Recross by Lanier)

02:20:53 1 the other director or senior manager that was in place at the
02:20:57 2 time to get experience.

02:21:02 3 Q. Okay. And I think they were in their late twenties at the
02:21:05 4 time or something like that to give us an idea of how many
02:21:07 5 years they had been out of school.

02:21:09 6 Does that seem right?

02:21:10 7 A. I honestly don't know their age at that particular point in
02:21:20 8 time. They had probably be practicing four to five years in
02:21:22 9 their particular pharmacy, but I'm not exactly sure what their
02:21:26 10 birthdays were.

02:21:27 11 Q. And to the best of your knowledge would they be giving the
02:21:30 12 same counsel that you were you or were you giving something
02:21:33 13 other than just Walmart policy?

02:21:39 14 A. To my knowledge, we were all sending out that same
02:21:44 15 information that I sent out. It was something that we used
02:21:47 16 together and gave consistent guidelines -- consistent guidance
02:21:52 17 that way.

02:21:53 18 Q. All right. Next question from a juror: "Prior to 2012,
02:22:01 19 would you have been responsible for the State of Ohio?"

02:22:10 20 A. I guess the first year when I was the senior manager of
02:22:16 21 controlled substances I was helping in all states. So, 2011,
02:22:22 22 2012, I was kind of over all states, I guess you would say.
02:22:25 23 Although most of the time the state issues were handled by the
02:22:30 24 senior directors, which were above my supervision level.
02:22:34 25 That's who handled it prior to 2011, would have been the senior

Nelson (Recross by Lanier)

02:22:39 1 directors.

02:22:40 2 Q. All right. The next question, I believe, is in reference
02:22:43 3 to the exhibit that I used with you where it showed with
02:22:52 4 Dr. Lalli, L-a-l-l-i, you responding to that Cleveland, Ohio,
02:22:57 5 situation.

02:22:59 6 And, so, within that framework or maybe another, and I
02:23:03 7 may just be wrong on trying to understand what the juror is
02:23:05 8 saying, but "If Mr. Nelson did not cover Ohio, why didn't you
02:23:10 9 refer to a colleague who might be more familiar with the
02:23:12 10 doctors in that state?"

02:23:18 11 A. Do you remember which document that was? I believe that
02:23:20 12 was the one where Mark Miller sent that to me?

02:23:24 13 Q. It was Dr. Lalli, L-a-l-l-i. I'll pull it up.

02:23:26 14 A. I understand that. Hold on. I might have it right here.

02:23:29 15 Yes, I have it here, sir, and I believe that is 26890
02:23:35 16 is that document, and I can tell you that Mark Miller was an
02:23:40 17 individual who I hired out of pharmacy school to become a
02:23:45 18 pharmacy manager and then Mark Miller became a district manager
02:23:50 19 who worked out of the Ohio area. And so Mark felt very
02:23:53 20 comfortable contacting me, so I assume -- and that's what this
02:23:56 21 is, an assumption, because I don't recall on June 18th of 2013,
02:24:01 22 if -- 2013, if Mr. Nocci (phonetic) was on vacation at that
02:24:08 23 time or not, or if it was just Mr. Miller who felt comfortable
02:24:11 24 contacting me directly because he had -- I think we have a
02:24:14 25 professional relationship and a personal relationship, and I

Nelson (Recross by Lanier)

02:24:16 1 assume that's why.

02:24:18 2 Q. Okay. And so that's why you're answering an Ohio situation
02:24:22 3 June of 2013, to the best of your measured thought. Fair?

02:24:31 4 A. Yes. And in regards it would have been the same
02:24:35 5 information if Carol had sent it to him as well.

02:24:39 6 Q. But again, did you say anything different than you believed
02:24:41 7 the other two people in your job would have been saying?

02:24:46 8 A. I don't believe so.

02:24:47 9 Q. Okay. Next. "Is Archer different than the computer system
02:24:53 10 a pharmacist would use to enter information about the
02:24:56 11 prescription?"

02:24:57 12 Why don't we stop there and then we'll keep going, but
02:25:00 13 first answer the first question --

02:25:02 14 A. The answer to that question is Archer is a web-based
02:25:08 15 process software that they enter the information into. You
02:25:12 16 could access it using the same computer system that we used to
02:25:16 17 fill prescriptions, but it was not in that same software where
02:25:20 18 the prescription filling is conducted.

02:25:23 19 Does that make sense?

02:25:25 20 Q. I'm not sure.

02:25:28 21 A. Okay. Let me think about it.

02:25:35 22 Q. Let's -- let's continue with the follow-up question and see
02:25:37 23 if that helps. "So the pharmacist would look this up separate?
02:25:42 24 Did they have an Archer system and a separate system?"

02:25:50 25 A. The second question is, yes, the pharmacist would look up

Nelson (Recross by Lanier)

02:25:54 1 information in Archer separately.

02:25:57 2 Q. Okay.

02:25:58 3 A. From the actual filling computer.

02:25:59 4 Q. And then the third question, "Is Archer connected to the
02:26:07 5 PMP or is that separate yet again?"

02:26:10 6 A. Yeah, the PMP is for prescriptions that were actually
02:26:13 7 filled and Archer is for notating prescriptions that were not
02:26:16 8 filled. So they are separate systems. One's operated by the
02:26:19 9 individual states, which is the PMP, and Archer was just a
02:26:22 10 software program that we used at Walmart to capture incident
02:26:25 11 information.

02:26:26 12 Q. But I want to press you a little bit on that because the
02:26:29 13 PMPs are run by the pharmacists to help them determine whether
02:26:34 14 to fill. True?

02:26:37 15 MR. MAJORAS: Objection to form.

02:26:38 16 THE COURT: Well, overruled.

02:26:41 17 THE WITNESS: I'm not sure I understand completely,
02:26:43 18 but a PMP is operated by the state -- by the state. It's not
02:26:48 19 operated by the pharmacist.

02:26:48 20 BY MR. LANIER:

02:26:49 21 Q. Right. So, for example -- I'm sorry. For example, in
02:26:54 22 Ohio, as of 2011, if a pharmacist was going to fill a certain
02:27:00 23 prescription and there's only -- it was only mandatory under a
02:27:03 24 certain specific guideline, but if there was an oxy 30 that was
02:27:10 25 going to be filled, before the pharmacist fills it, the

Nelson (Recross by Lanier) —

02:27:12 1 pharmacist was required to look up the PMP, it's called OARRS
02:27:16 2 in Ohio, and make a determination if there are any red flags or
02:27:24 3 issues. So, in that sense, check the PMP before dispensing.

02:27:30 4 Are you tracking with me?

02:27:32 5 A. I can't speak to whether that was OARRS or not, it may have
02:27:37 6 been. In 2011, many states had that requirement as PMPs came
02:27:42 7 online.

02:27:43 8 Q. But the point then, in terms of the juror's question for me
02:27:45 9 at least, would be Archer did not check the PMP either; the PMP
02:27:51 10 would have to be checked independently. Is that fair?

02:27:53 11 A. That is accurate.

02:27:55 12 Q. Thank you.

02:27:56 13 And then the final set of juror questions at this
02:28:01 14 point is two on this sheet. The first one says, "If there was
02:28:07 15 an update to the prescription -- I mean, the pharmacy operating
02:28:12 16 manual in regards to blanket refusals being prohibited, where
02:28:16 17 in the original does it state that Walmart had a policy
02:28:20 18 prohibiting blanket refusals and that it was stated by the
02:28:23 19 state medical board of pharmacy? In other words, was there an
02:28:28 20 actual POM in writing?"

02:28:33 21 A. Yes. POM 1703 contained information saying that refusal to
02:28:39 22 fills -- or, excuse me, blanket refusals were prohibited.

02:28:44 23 Q. I've got -- I've got a copy of POM 1703 as it existed in
02:28:53 24 July of 2015. It's Plaintiffs' Exhibit 21090.

02:28:59 25 I did not know this would come up, so I don't think

Nelson (Recross by Lanier)

02:29:01 1 it's in your box, sir, but if you can look at the screen, and
02:29:05 2 I'm glad to turn the pages in any way, shape, form, or fashion
02:29:09 3 that you might want, but do you recognize at least the title
02:29:12 4 that this is POM 1703?

02:29:18 5 A. That looks -- looks like the way a POM would have been
02:29:20 6 written.

02:29:21 7 Q. And is it true that POM 1703 only dealt with, according to
02:29:26 8 the title, "Forged or fraudulent prescription procedures"?

02:29:33 9 A. I believe it also covers refusal to fill.

02:29:37 10 Q. But is it refusals to fill in a situation that are forged
02:29:41 11 or fraudulent?

02:29:46 12 A. Don't recall.

02:29:47 13 Q. If you look, you'll see it says, "Potential indicators of
02:29:51 14 fraudulent, forged, or altered prescriptions." Then it gives a
02:29:56 15 host of bullet points.

02:29:59 16 Do you see that?

02:30:00 17 A. Yes, sir. I do.

02:30:02 18 Q. "Prescriptions written in more than one color ink,
02:30:06 19 unusually high quantities or dosages which differ from usual
02:30:11 20 medical use, different handwriting styles or penmanship that's
02:30:15 21 too good or too legible, prescriptions written in full without
02:30:21 22 standard abbreviations. See, these are all about fraudulent,
02:30:25 23 forged, or altered prescriptions."

02:30:27 24 Do you see that, sir?

02:30:31 25 A. I see that's on the document, yes, sir.

Nelson (Recross by Lanier)

02:30:34 1 Q. And then if we continue to look at the rest of the POM, it
02:30:41 2 does talk about if there's evidence of doctor shopping to
02:30:51 3 obtain prescriptions for controlled substances, it talks about
02:30:56 4 detect prescriptions that may have been forged and altered and
02:30:59 5 how to deal with that.

02:31:00 6 Do you see that as well?

02:31:08 7 A. It appears that that's included, yes, sir.

02:31:10 8 Q. And then if you go to the third page of forged or
02:31:13 9 fraudulent prescription procedures, it talks about verifying
02:31:18 10 and reporting forged or altered prescriptions.

02:31:21 11 Do you see that also?

02:31:27 12 A. I do.

02:31:28 13 Q. It says, in Point 4, "If the prescribing practitioner
02:31:33 14 validates that the prescription is legitimate, document in the
02:31:37 15 prescription note sections of CONEXIS."

02:31:39 16 Is CONEXIS that other computer program you were
02:31:45 17 talking about independent of Archer?

02:31:45 18 A. That is correct.

02:31:52 19 Q. But, sir, within the confines of this, is there any place
02:31:55 20 we ought to be looking to see whether or not there's anything
02:32:01 21 at all about a blanket refusal to fill policy?

02:32:10 22 A. Without a copy of it right in front of me, sir, I don't
02:32:12 23 remember where it's at. It may be in that one or it could be a
02:32:15 24 different POM.

02:32:16 25 Q. Okay. Next juror question: "There was a mention as to the

Nelson (Recross by Lanier) —

02:32:21 1 refusal to fill form not being filled correctly. Who would
02:32:26 2 follow up to make sure that it was resubmitted and not just
02:32:29 3 left out and not reported and not considered for a block?

02:32:35 4 "What was the procedure, sir?"

02:32:38 5 A. When the pharmacist filled out the web form, as they're
02:32:41 6 filling out the web form, if they left off a required field, it
02:32:47 7 would stop them when they submitted -- submitted -- or
02:32:50 8 attempted to submit it and say, you must fill in this
02:32:53 9 particular field. Kind of like if you're buying something on
02:32:56 10 the internet and you try to put in your credit card number and
02:32:58 11 you leave off that little CV code at the end, it will stop you
02:33:01 12 and say, wait, time out, you got to put the CV code in. That's
02:33:05 13 kind of what the web form did, is it stopped and put in red,
02:33:10 14 this information is required. So the pharmacist filling out
02:33:13 15 the form would have been the individual that would have had to
02:33:16 16 correct it in order to submit it.

02:33:19 17 Q. All right. And then for my last set of questions from what
02:33:26 18 you were asked by Mr. Majoras, first of all, you were asked
02:33:32 19 about your form response in one of the exhibits that I used.
02:33:36 20 It was Exhibit 14643.

02:33:38 21 Do you recall that?

02:33:43 22 A. Let me find it again, but go ahead.

02:33:45 23 Q. Yeah, this is the one where Mr. Majoras pointed out that I
02:33:48 24 didn't read everything word for word, that I had left out this
02:33:51 25 section right here (indicating) and he didn't add it, but I

Nelson (Recross by Lanier)

02:33:55 1 also left out these sections down here (indicating).

02:33:57 2 Do you see that?

02:33:59 3 A. Yes, sir.

02:34:00 4 Q. I don't -- I don't want there to be any -- well, help me

02:34:04 5 understand if I've left out anything that's pertinent to what

02:34:06 6 we're talking about. Okay?

02:34:10 7 What you say here, and I'll use a different color
02:34:14 8 highlighter to make it clear, that this is additional, is you
02:34:18 9 say, "One of the biggest mistakes the pharmacists make is a
02:34:22 10 belief they're required to fill a prescription from a
02:34:23 11 prescriber once they've called and established the prescription
02:34:27 12 was written by the prescriber."

02:34:29 13 Nobody fusses that; right?

02:34:32 14 A. Correct.

02:34:34 15 Q. This is not true. The pharmacist is still able to refuse
02:34:39 16 to fill a prescription even after contacting the prescriber's
02:34:42 17 office.

02:34:42 18 No fuss on that either, right?

02:34:47 19 A. Not from me.

02:34:48 20 Q. If they choose to not fill a prescription, they must follow
02:34:51 21 POM 1703 for refusal to fill and fraudulent prescriptions.

02:34:57 22 Do you see that?

02:35:04 23 A. I do.

02:35:04 24 Q. And that's what we were looking at that talked about
02:35:06 25 potential indicators of fraudulent, forged, or altered

Nelson (Recross by Lanier)

02:35:09 1 prescriptions. True?

02:35:13 2 A. Well, that -- of the parts of the POM you've showed me,

02:35:18 3 sir --

02:35:18 4 Q. And then --

02:35:18 5 A. -- I mean, I don't know where it's all at, but yes, 1703 is
02:35:21 6 the document that should require --

02:35:23 7 Q. Because you --

02:35:24 8 A. -- require them to fill out a refusal to fill form.

02:35:25 9 Q. Sorry. Sorry. Because you don't have the POM in front of
02:35:28 10 you, I want to see if there's a section here that slipped our
02:35:33 11 consideration so that we're accurate on the record. Okay? So
02:35:38 12 I'm going to just show each page and have you look at it. If I
02:35:42 13 need to zoom in more than that we'll lose the page but I'll be
02:35:47 14 glad to. The sections are written out in bold on the side
02:35:50 15 about verifying and reporting forged or altered prescriptions.

02:35:54 16 You see that?

02:35:54 17 A. Okay.

02:35:55 18 Q. And this is July of 2015; correct? Do you see that?

02:36:02 19 A. That's correct, sir.

02:36:04 20 Q. And then we've got, on the next page, more information
02:36:08 21 about verifying and reporting forged or altered prescriptions.

02:36:13 22 Do you see that as well?

02:36:17 23 A. Yes, sir.

02:36:18 24 Q. And then if we flip to the next page, we've got more on
02:36:25 25 verifying and reporting forged or altered prescriptions.

Nelson (Recross by Lanier) —

02:36:30 1 Do you see that as well?

02:36:32 2 A. Yes.

02:36:33 3 Q. And then we go to Page 5 where we've got more on verifying
02:36:40 4 and reporting forged or altered prescriptions.

02:36:44 5 Do you see that as well?

02:36:46 6 A. Yes, sir.

02:36:47 7 Q. Now, here, under point 10, it says -- and this is under
02:36:53 8 point 10 of verifying and reporting forged or altered
02:36:56 9 prescriptions, "In any circumstance where the pharmacist
02:36:58 10 declines to fill a prescription because the pharmacist has
02:37:03 11 concluded the prescription is forged, altered, or issued for
02:37:06 12 other than a legitimate medical purpose by a practitioner
02:37:11 13 acting outside the usual course of professional practice, and
02:37:19 14 that conclusion can be reached because of a written or verbal
02:37:22 15 statement by the prescriber or in the exercise of pharmacist's
02:37:25 16 professional judgment, a refusal to fill prescription report
02:37:29 17 shall be submit the -- a refusal to fill prescription report
02:37:35 18 shall be submit the."

02:37:40 19 A. That's -- that's what it says.

02:37:41 20 Q. Okay. You got any clue what it was supposed to say?

02:37:47 21 A. Sir, I don't know. I'm assuming it should have said
02:37:50 22 something along the line of shall be submitted. Report shall
02:37:56 23 be submitted. I don't know. It's obviously a typo of some
02:38:00 24 kind.

02:38:00 25 Q. All right. And then it says, "Please refer to the detailed

Nelson (Recross by Lanier)

02:38:04 1 instructions." It looks like that might have been a link on
02:38:08 2 completing the refusal to fill form. "Click here and select
02:38:11 3 Archer compliance. This form provides important details of the
02:38:16 4 transaction so that practice compliance can -- may take
02:38:20 5 appropriate follow-up action. In addition, the pharmacist
02:38:22 6 should retain a copy of the prescription in the forged
02:38:28 7 prescription file."

02:38:29 8 Do you see that?

02:38:30 9 A. I do, sir.

02:38:30 10 Q. Then it talks about what to do if you you've dispensed a
02:38:35 11 prescription that you find out later was forged or altered;
02:38:38 12 right?

02:38:41 13 A. Yes, sir.

02:38:42 14 Q. "Situations which could lead to the arrest of patients with
02:38:46 15 legitimate prescriptions."

02:38:47 16 See that?

02:38:48 17 A. I do.

02:38:51 18 Q. "Detention of persons presenting forged or altered
02:38:56 19 scripts."

02:38:56 20 That's just like you can't do that; right?

02:38:59 21 A. I believe that's what the policy said.

02:39:02 22 Q. "Identifying persons who drop off suspected forged or
02:39:06 23 altered prescriptions."

02:39:07 24 You see that as well?

02:39:09 25 A. I do.

Nelson (Recross by Lanier)

02:39:12 1 Q. We're almost through with the POM.

02:39:18 2 "Request to file charges; request by law enforcement
02:39:23 3 to fill a forged or altered prescription; HIPAA regulations."

02:39:28 4 You got those sections; right?

02:39:30 5 A. Yes, sir.

02:39:31 6 Q. "Releasing documents to law enforcement; and then home
02:39:35 7 office contact numbers; and frequently asked questions."

02:39:39 8 That's it; right?

02:39:40 9 A. Yeah. I would like to point out that that POM that you
02:39:44 10 have in your hand is the new one that was published in July of
02:39:46 11 2015 that converted the process from the web form to Archer and
02:39:54 12 also took out any verbiage discussing blanket refusal.

02:39:58 13 Q. Okay. If we go back to Plaintiffs' Exhibit 14643, another
02:40:03 14 section that I didn't read to the jury is, "The pharmacist
02:40:06 15 should" -- excuse me, sir.

02:40:11 16 "The pharmacist should return the prescription back to
02:40:13 17 the patient and explain the reason they didn't feel comfortable
02:40:17 18 filling the prescription as written."

02:40:19 19 Do you see that?

02:40:22 20 A. That is correct.

02:40:25 21 Q. Now, that's Walmart policy, but there's -- do you know what
02:40:30 22 the law is on that?

02:40:33 23 A. Well, if it's altered or forged it shouldn't be returned.

02:40:38 24 Q. Yeah. In fact, I don't -- do you know of any law that
02:40:41 25 requires the pharmacist to return it?

Nelson (Recross by Lanier)

02:40:46 1 MR. MAJORAS: Objection. Foundation.

02:40:48 2 THE COURT: Overruled.

02:40:51 3 THE WITNESS: I'm not aware of any particular law that
02:40:54 4 says that you're required to return a prescription to someone.

02:40:58 5 BY MR. LANIER:

02:40:59 6 Q. Because if you return a prescription and they just take it
02:41:02 7 to the next place and they know why you didn't fill it, it's
02:41:06 8 kind of like a road map on how to get it filled, isn't it?

02:41:12 9 A. Sir, I don't know. Each pharmacist put their own
02:41:16 10 information and notations on prescriptions when they gave them
02:41:18 11 back -- gave them back to the patient, so. . .

02:41:20 12 Q. Okay. And then last but not least, you were also asked
02:41:25 13 questions by Mr. Majoras about reporting things to the FDA.

02:41:33 14 Do you remember that?

02:41:35 15 MR. MAJORAS: The DEA.

02:41:37 16 BY MR. LANIER:

02:41:38 17 Q. I mean, to the DEA.

02:41:39 18 Do you remember that?

02:41:39 19 A. I do.

02:41:41 20 Q. And this comes back to the exhibit I asked you about in
02:41:44 21 your deposition, Plaintiffs' 20852. It won't be in there
02:41:48 22 because I didn't know it would come up, but this is the one
02:41:53 23 where you said, in essence, y'all were doing that because of
02:41:58 24 the memorandum of agreement that you had with the DEA.

02:42:01 25 Do you remember that?

Nelson (Recross by Lanier)

02:42:05 1 A. That was part of our refusal to fill process, yes.

02:42:08 2 Q. Under the DEA agreement, y'all had agreed that you would

02:42:13 3 report those; correct?

02:42:18 4 A. That's my understanding, yes.

02:42:19 5 Q. Because you e-mailed and said that the MOA that requires

02:42:24 6 the reporting of refusals to fill expires in 30 days. You

02:42:30 7 said, "We've not invested a great amount of effort in doing

02:42:33 8 analysis on the data since the agreement's virtually over.

02:42:38 9 Driving sales and patient awareness is a far better use of our

02:42:42 10 market directors' and market managers' time."

02:42:47 11 Do you see that?

02:42:48 12 A. Yes, sir.

02:42:48 13 Q. And we all know what driving sales is, but patient

02:42:51 14 awareness, that's a special term within Walmart, isn't it?

02:42:58 15 A. I don't know if it's unique to Walmart or not.

02:43:00 16 Q. Well, why don't you explain to the jury what you mean by

02:43:03 17 "patient awareness."

02:43:07 18 A. Well, I believe I testified earlier that it has to do with

02:43:13 19 services available by the pharmacy such as immunization.

02:43:20 20 Q. In other words, make the patient aware of what else you

02:43:23 21 could sell to them; right?

02:43:28 22 A. Potentially.

02:43:29 23 Q. Okay.

02:43:30 24 MR. LANIER: Pass the witness. Thank you.

02:43:32 25 Thank you, Your Honor.

Nelson (Redirect by Majoras)

02:43:33 1 THE COURT: Okay. Thank you, Mr. Lanier.

02:43:34 2 Mr. Majoras, anything?

02:43:39 3 MR. MAJORAS: Yes, sir.

02:43:39 4 THE COURT: Okay.

02:43:52 5 MR. LANIER: Your Honor, can I give these notes to

02:43:53 6 Mr. Pitts?

02:43:54 7 THE COURT: Yes. Thank you.

02:43:55 8 MR. LANIER: Thank you.

02:44:00 9 MR. MAJORAS: I keep looking at the witness stand but

02:44:02 10 you're on my screen.

02:44:02 11 REDIRECT EXAMINATION OF BRAD NELSON

02:44:05 12 BY MR. MAJORAS:

02:44:05 13 Q. Mr. Nelson, Mr. Lanier showed you POM 1703. Do you know

02:44:09 14 whether POM 1311 is the one that addresses the blanket refusals

02:44:12 15 to fill prior to it being changed in 2017?

02:44:18 16 A. Sir, I don't recall specifically which POM said what

02:44:22 17 because it's been quite a few years and things have moved

02:44:26 18 through that time. I do know that the blanket refusal

02:44:28 19 information was in one of the POMs. I can't attest for sure

02:44:31 20 which one it was in.

02:44:32 21 Q. Let me -- I'm going do this similar -- similarly to the way

02:44:36 22 Mr. Lanier did it since I don't have a copy in front of me, but

02:44:39 23 I'm going to ask our tech person if he'll put up POM 1311,

02:44:45 24 which is Walmart Exhibit 00558. Put that up on the screen.

02:44:56 25 Sir, do you recognize this as a version of POM 1311?

Nelson (Redirect by Majoras)

02:45:01 1 If you look at the date, this one is dated March 2011.

02:45:07 2 A. That certainly looks like one of the formats that we would

02:45:10 3 have used for POMs.

02:45:10 4 Q. Okay. Let's flip to Page 4, please. And see if you can

02:45:24 5 make that a little bit bigger, the box, the gray box.

02:45:29 6 A. I can see it.

02:45:30 7 Q. In this gray box, POM 1311 at that time stated, "Blanket

02:45:34 8 refusals of prescriptions are not allowed. A pharmacist must

02:45:37 9 make an individual assessment of each prescription and

02:45:41 10 determine that it was not issued based on a valid

02:45:45 11 prescriber/patient relationship or for a valid medical reason

02:45:48 12 before refusing to fill."

02:45:49 13 Do you see that, sir?

02:45:51 14 A. I do.

02:45:52 15 Q. And does that refresh your recollection as to where the

02:45:56 16 blanket refusal information was found in the Walmart POMs?

02:46:00 17 A. In 2011, that's where it was at.

02:46:03 18 MR. MAJORAS: Thank you, Your Honor.

02:46:04 19 Thank you, Mr. Nelson.

02:46:07 20 THE COURT: Okay. Mr. Nelson, thank you very much for

02:46:11 21 making yourself available and have a good day, sir. You may be

02:46:16 22 excused.

02:46:17 23 THE WITNESS: Thank you, Your Honor.

02:46:18 24 (Witness excused.)

02:46:18 25 THE COURT: Ladies and gentlemen, we'll take our

02:46:20 1 mid-afternoon break a little early. There's no point in
02:46:24 2 truncating the next witness. So 15 minutes. Usual admonitions
02:46:28 3 apply and then we'll pick up with the plaintiffs' next witness.
02:46:32 4 (Jury excused from courtroom).
02:46:56 5 (Recess was taken from 2:46 p.m. till 3:03 p.m.)
03:03:34 6 COURTROOM DEPUTY: All rise.
03:06:01 7 (Jury returned to courtroom at 3:06 p.m.)
03:06:10 8 THE COURT: Okay. Please be seated, ladies and
03:06:12 9 gentlemen.
03:06:12 10 The next witness is by deposition; is that correct?
03:06:16 11 MR. LANIER: That is correct, Your Honor. My voice is
03:06:18 12 glad too.
03:06:18 13 The next witness, ladies and gentlemen, is Michelle
03:06:22 14 Travassos. She spells it T-r-a-v, as in Victor, -a-s-s-o-s, I
03:06:32 15 think. Michelle Travassos. She also worked for CVS. She was
03:06:39 16 their pharmacy professional services manager.
03:06:46 17 We won't make it through this whole deposition this
03:06:52 18 afternoon. Your Honor has asked me to find a place to stop it
03:06:54 19 at around 5:15. The deposition itself, the play for both
03:06:57 20 plaintiff and defendant, totals out to 2 hours and 45 minutes.
03:07:03 21 Both the witness and Mr. Elsner is the one who does questioning
03:07:07 22 for the plaintiffs. He's not in here today, but you'll see him
03:07:09 23 at times in the back. He's real soft-spoken so you're not
03:07:14 24 allowed to go to sleep. Okay? Just warning you, he's not like
03:07:19 25 me, and he'll just be soft spoken and not -- maybe a nice

Travassos (By Video Deposition)

03:07:25 1 relief for y'all.

03:07:26 2 But with that, Your Honor, we're ready to play the
03:07:29 3 deposition.

03:07:29 4 THE COURT: Okay. Very well. Thank you.

03:07:31 5 MR. LANIER: Thank you, Judge.

03:07:40 6 THE COURT: I don't think the sound's working.

03:07:42 7 MR. LANIER: Yeah. There's no sound, Dan.

03:07:46 8 THE COURT: That will be limited.

03:07:46 9 DEPOSITION TESTIMONY OF MICHELLE LUCY TRAVASSOS

03:07:56 10 Q. Good morning, Miss Travassos.

03:07:59 11 A. Good morning.

03:07:59 12 Q. Can you please state for us your full name?

03:08:02 13 A. Michelle Lucy Travassos.

03:08:03 14 Q. Did you obtain a degree in pharmacy?

03:08:05 15 A. Yes.

03:08:06 16 Q. And where did you obtain that degree from?

03:08:10 17 A. The University of Rhode Island.

03:08:13 18 Q. In what year did you graduate?

03:08:15 19 A. 1990.

03:08:17 20 Q. Did you obtain a license to practice as a pharmacist?

03:08:21 21 A. Yes.

03:08:22 22 Q. Do you maintain that license today?

03:08:25 23 A. Yes.

03:08:28 24 Q. Did you work as a pharmacist?

03:08:31 25 A. Yes.

Travassos (By Video Deposition)

03:08:32 1 Q. Where did you work as a pharmacist?

03:08:36 2 A. I've always worked for CVS Pharmacy.

03:08:40 3 Q. When did you begin working as a pharmacist for CVS?

03:08:45 4 A. Upon graduation, 1990.

03:08:48 5 Q. Over what years did you work as a pharmacist for CVS?

03:08:54 6 A. Well, I'm still a pharmacist, but dispensing pharmacist, if

03:09:00 7 that's what you're referring to, would be from 1990 to 2001.

03:09:09 8 Q. Is 2001 the last time you worked as a pharmacist dispensing

03:09:15 9 medications?

03:09:16 10 A. Yes.

03:09:20 11 Q. Who is your current employer?

03:09:24 12 A. CVS Health still.

03:09:28 13 Q. And in what -- and please explain to me the transition that

03:09:33 14 you made from a pharmacist to your next position at CVS in

03:09:39 15 2001.

03:09:40 16 A. In 2001, I transitioned to be an analyst in health care

03:09:48 17 services at the corporate office.

03:09:50 18 Q. I believe that you said that you were in that position from

03:09:54 19 2001 to roughly 2004 or 2005.

03:09:57 20 What was your next position at CVS?

03:10:01 21 A. I worked in pharmacy operations.

03:10:05 22 Q. And what was your -- and what year did you join pharmacy

03:10:10 23 operations?

03:10:11 24 A. It was continuous so I moved from health care services to

03:10:19 25 pharmacy operations in -- again, I'm estimating maybe 2005.

Travassos (By Video Deposition)

03:10:22 1 Q. And how long did you serve that role in pharmacy
03:10:24 2 operations?

03:10:24 3 A. Until 2012.

03:10:29 4 Q. Did CVS have a dedicated department or group prior to 2012
03:10:39 5 to field inquiries from pharmacists concerning prescribers of
03:10:44 6 concern or potential evidence of diversion?

03:10:48 7 A. We've always had -- at the time it was loss prevention that
03:10:52 8 would field concerns of diversion, but I am not aware that
03:11:03 9 there was a dedicated group for prescribers at that time.

03:11:07 10 Q. Did you receive any additional training or education when
03:11:15 11 joining the professional practice team?

03:11:22 12 A. Nothing specifically provided. It was more self-research.

03:11:29 13 Q. In 2012, you became a manager in the pharmacy professional
03:11:35 14 services department at CVS; is that right?

03:11:37 15 A. Yes.

03:11:38 16 Q. Was this a new department at CVS in 2012, the pharmacy
03:11:45 17 professional services department?

03:11:48 18 A. I'm not really aware of the year that it was formed. Can't
03:11:57 19 say definitively.

03:11:59 20 Q. Well, when you joined the department, how many people were
03:12:02 21 in it?

03:12:04 22 A. It was probably relatively new because it was three
03:12:11 23 individuals at that time.

03:12:11 24 Q. Okay. And it was Nicci Harrington; is that right?

03:12:16 25 A. She was not in the role yet.

Travassos (By Video Deposition)

03:12:19 1 Q. Was it Papatya Tankut?

03:12:21 2 A. Yes.

03:12:23 3 Q. And was she the head of that department?

03:12:27 4 A. Yes.

03:12:27 5 Q. Did you report to her?

03:12:31 6 A. Yes. It was a brief time, but yes.

03:12:34 7 Q. So it was Papatya Tankut and was it Dani Johnson?

03:12:41 8 A. Yes.

03:12:42 9 Q. And what was Dani Johnson's role?

03:12:46 10 A. She was in analytics.

03:12:49 11 Q. Do you have an understanding of why the pharmacy
03:12:52 12 professional services department was created?

03:13:02 13 A. I don't know specifics about why it was created, but I know
03:13:07 14 that we -- you know, our focus is on controlled substances.

03:13:13 15 Q. What aspect of controlled substances?

03:13:19 16 A. Basically all aspects insofar as dispensing, ordering,
03:13:33 17 prescribing, and safer community aspects.

03:13:40 18 Q. Prior to the creation of the pharmacy professional services
03:13:44 19 department, was there a group or department that was
03:13:49 20 responsible for controlled substances prior to this group?

03:13:51 21 A. It was always the responsibility of the field leaders to
03:13:57 22 kind of monitor, you know, stores' performance.

03:14:05 23 Q. So there was no corporate department at CVS responsible for
03:14:08 24 controlled substances prior to the creation of the pharmacy
03:14:11 25 professional services department; correct?

Travassos (By Video Deposition)

03:14:14 1 A. There were other groups such as the inventory team and
03:14:21 2 pharmacy operations would have, I guess, overseen at a high
03:14:30 3 level in addition to field management.

03:14:32 4 Q. What does the inventory team do?

03:14:34 5 A. They're the department responsible for ordering and in
03:14:40 6 stock, et cetera.

03:14:41 7 Q. So there was -- so there was a corporate office for
03:14:47 8 monitoring and managing general, but there was no department
03:14:52 9 responsible for dispensing, creating safer communities,
03:15:00 10 prescribers at the CVS corporate level before the development
03:15:04 11 of the pharmacy professional services department; correct?

03:15:06 12 A. Those activities would have been monitored by field leaders
03:15:10 13 and pharmacy operations at a higher level, but no specific
03:15:16 14 department.

03:15:17 15 Q. What was your understanding of your job responsibilities
03:15:22 16 when you joined the professional services department, the
03:15:25 17 pharmacy professional services department?

03:15:29 18 A. Basically to learn the operations and support the programs
03:15:37 19 that were currently in place.

03:15:43 20 Q. And what were the programs currently in place in 2012 when
03:15:48 21 you joined?

03:15:51 22 A. Specifically what I remember is the store program,
03:16:00 23 controlled substances dispensing program, prescriber program,
03:16:06 24 and the ordering programs -- holding, canceled and MAQ.

03:16:17 25 Q. So there was the prescriber monitoring program; is that

Travassos (By Video Deposition)

03:16:22 1 right?

03:16:22 2 A. Yes.

03:16:22 3 Q. And that monitored prescribers -- it compared prescribers
03:16:28 4 in particular regions in specialties to one another to
03:16:34 5 determine outlier prescribers, correct?

03:16:36 6 A. There was an algorithm that would identify outliers based
03:16:41 7 on their prescribing, correct.

03:16:43 8 Q. Okay. And then you described the store program. And what
03:16:47 9 was the store program?

03:16:50 10 A. It was -- and still is -- a proactive program that looks at
03:16:59 11 the dispensing of stores over time to I think comparison within
03:17:05 12 a relative geography to identify stores that may fall outside
03:17:12 13 of the mean based upon specific dispensing characteristics.

03:17:16 14 Q. And both those programs started in 2012 and 2013; correct?

03:17:23 15 A. I don't really know when they started because they were
03:17:25 16 already there when I came on board in the summer of 2012.

03:17:34 17 Q. But they were new programs; right? They hadn't been there
03:17:37 18 for years; right?

03:17:38 19 A. I don't believe so. I think you're correct.

03:17:39 20 Q. But at that time in January of 2013 there were potentially
03:17:45 21 three employees in the pharmacy professional services
03:17:48 22 department; is that right, Nicci Harrington, Dani Johnson, and
03:17:52 23 you?

03:17:59 24 A. Yes.

03:17:59 25 Q. And at that time in 2013 CVS had roughly 7,600 stores.

Travassos (By Video Deposition)

03:18:05 1 Does that sound roughly accurate to you?

03:18:07 2 A. I would say so, yes.

03:18:09 3 Q. Okay. So CVS had three dedicated employees in the pharmacy

03:18:13 4 professional services department to monitor 7,600 stores;

03:18:18 5 correct?

03:18:24 6 A. Yes.

03:18:24 7 Q. Why did CVS develop a professional -- a pharmacy

03:18:34 8 professional services department? What was its purpose?

03:18:38 9 A. I can't really say why they started the two because it

03:18:43 10 started before I, you know, came on board.

03:18:49 11 Q. One of the purposes was to try to understand what the DEA

03:18:55 12 was thinking; correct?

03:18:56 13 A. Not to my knowledge.

03:18:57 14 Q. All right. Ms. Travassos, this is a PowerPoint related to

03:19:02 15 the pharmacy professional practice team dated January 2013.

03:19:14 16 A. Yes.

03:19:14 17 Q. Ms. Travassos, if you turn to Page 9 under manager 1, it

03:19:17 18 lists in the second bullet, "Special focus on stores that have

03:19:22 19 a good working relationship with DEA officials to try to

03:19:25 20 understand how the DEA is thinking."

03:19:32 21 Did I read that correctly?

03:19:32 22 A. You did.

03:19:34 23 Q. Why was CVS focused on what the DEA was thinking?

03:19:38 24 A. I can't really say. I don't really remember this document.

03:19:43 25 Q. Well, in part it was to prevent enforcement actions and

Travassos (By Video Deposition)

03:19:47 1 regulatory actions; correct?

03:19:48 2 A. I think it was to have all the information at hand so that
03:19:52 3 we could, you know, provide tools to our pharmacists to support
03:20:00 4 them in their exercise of corresponding responsibility.

03:20:09 5 Q. But with respect to what DEA officials enforcement actions
03:20:13 6 had been undertaken; correct?

03:20:15 7 A. Again, I don't really remember this document to know what
03:20:18 8 the context was.

03:20:19 9 Q. You were aware in 2012 that CVS had enforcement action
03:20:27 10 undertaken against it in Florida related to two of its
03:20:31 11 pharmacies; correct?

03:20:35 12 A. Yes, I was aware of that.

03:20:36 13 Q. And, in fact, the DEA suspended two CVS pharmacies from
03:20:41 14 dispensing controlled substances; correct?

03:20:47 15 A. That is correct.

03:20:48 16 Q. On Page 6, this is the -- this is sort of the working chart
03:20:59 17 of the pharmacy professional practices organization as of
03:21:02 18 January of 2013 and it lists Nicci as the director; correct?

03:21:06 19 A. Yes.

03:21:06 20 Q. And it lists Dani as the analyst?

03:21:10 21 A. Yes.

03:21:10 22 Q. And then you are listed as manager 2 day-to-day; correct?

03:21:15 23 A. Yes.

03:21:16 24 Q. Okay. And at this time all these other positions were
03:21:21 25 vacant; is that right?

Travassos (By Video Deposition)

03:21:29 1 A. It appears so.

03:21:31 2 Q. And, so, at this time were you then responsible for all of
03:21:42 3 the programs that were being operated out of the pharmacy
03:21:47 4 professional practices organization?

03:21:48 5 A. I assisted in managing them. I wouldn't say that I was the
03:21:54 6 sole manager.

03:21:56 7 Q. And who assisted you with that work?

03:22:02 8 A. It would have been a collaboration of the three of us,
03:22:07 9 Nicci and Dani and myself.

03:22:09 10 Q. Ms. Travassos, each CVS Pharmacy holds a DEA license to
03:22:14 11 dispense controlled substances; right?

03:22:20 12 A. If they're going to dispense controlled substances, that's
03:22:23 13 correct.

03:22:23 14 Q. Okay. And all CVS pharmacies have a license to dispense
03:22:28 15 controlled substances. Is that true?

03:22:32 16 A. To my knowledge, there may be one that does not.

03:22:37 17 Q. I'm just curious now. Which one is that?

03:22:45 18 A. I believe there's a pharmacy in California.

03:22:50 19 Q. Is there a particular reason that that one does not?

03:22:59 20 A. They voluntarily surrendered it.

03:23:05 21 Q. Why?

03:23:11 22 A. It was the result of a DEA visit to the store.

03:23:18 23 Q. And a pharmacy cannot dispense a controlled substance
03:23:24 24 without a license; right?

03:23:26 25 A. Correct.

Travassos (By Video Deposition)

03:23:29 1 Q. What is your understanding of why a license is needed to
03:23:31 2 dispense a controlled substance?

03:23:40 3 A. Controlled substances are more closely regulated, so they
03:23:50 4 require a DEA license.

03:23:53 5 Q. Why are controlled substances more closely regulated?

03:24:06 6 A. Because there is more risk associated with misuse.

03:24:11 7 Q. Risk of what?

03:24:15 8 A. Risk of side effects, diversion.

03:24:24 9 Q. You also -- you also said there was a risk associated with
03:24:29 10 misuse and you included diversion; is that right?

03:24:32 11 A. Correct.

03:24:33 12 Q. What is diversion?

03:24:38 13 A. Diversion is when a prescription drug is used for something
03:24:50 14 it wasn't intended to be used for.

03:24:55 15 Q. Like what?

03:24:58 16 A. Like somebody other than who it was prescribed for takes
03:25:04 17 it.

03:25:07 18 Q. All right. Anything else?

03:25:11 19 A. If it's obtained in fraudulent way.

03:25:24 20 Q. All right. Any other examples of diversion?

03:25:25 21 A. There are -- I'm sure there are others, but theft.

03:25:32 22 Q. Okay. Do you agree that opioids that are diverted pose a
03:25:41 23 danger to the public?

03:25:42 24 A. Anytime an opioid is used for something it's not intended
03:25:47 25 to be used for could be a risk to the public.

Travassos (By Video Deposition)

03:25:53 1 Q. Does it -- okay. And you said a risk to the public?

03:25:58 2 A. Yes.

03:26:02 3 Q. Do you believe that pharmacies play an important role to
03:26:06 4 detect, report, and prevent diversion of opioids?

03:26:10 5 A. Pharmacists and pharmacy staff are trained to be alert to
03:26:15 6 signs of diversion.

03:26:17 7 Q. And do they -- do they play an important role as the last
03:26:21 8 gatekeepers before a controlled substance is dispensed to a
03:26:29 9 patient?

03:26:29 10 A. Again, they are trained to be alert to signs of diversion
03:26:41 11 to -- to make sure, to the best of their ability, that
03:26:43 12 prescriptions are legitimate.

03:26:46 13 Q. And why is that important?

03:26:47 14 A. Because we wouldn't want controlled substances to be
03:26:55 15 dispensed that weren't intended for legitimate use.

03:27:02 16 Q. And why?

03:27:08 17 A. If they're not dispensed for a legitimate use, there's a
03:27:14 18 risk of it getting into the wrong hands or being used for other
03:27:23 19 purposes.

03:27:26 20 Q. Do they cause a danger to the public?

03:27:31 21 A. Once they leave the pharmacy we don't know what people do
03:27:33 22 with them, but if -- you know, someone who it wasn't intended
03:27:42 23 for would get ahold of it and is using it for something that it
03:27:45 24 wasn't prescribed for them, it could cause a danger for them.

03:27:49 25 Q. Okay. Would you agree with me that pharmacies and

Travassos (By Video Deposition)

03:27:52 1 pharmacists are the last line of defense before the dispensing
03:27:57 2 of a controlled substance, like an opioid?

03:28:00 3 A. Yes. Prior to -- as they are the dispensers.

03:28:04 4 Q. And do you agree that it's important for CVS to provide
03:28:07 5 guidance to its pharmacists to identify and prevent diversion?

03:28:10 6 A. There is a lot of training to that matter.

03:28:13 7 Q. But my question, ma'am, is, do you agree that it's
03:28:18 8 important for CVS to identify and prevent diversion?

03:28:26 9 A. I can't speak to CVS. I can speak to what I know in the
03:28:29 10 programs that I've been involved with that we do provide a lot
03:28:32 11 of training.

03:28:33 12 Q. And this is one of your responsibilities at CVS, is to
03:28:37 13 provide guidance from corporate headquarters to CVS pharmacists
03:28:42 14 related to identifying and preventing diversion; right?

03:28:47 15 A. In collaboration with others, yes, I do provide review of
03:28:53 16 trainings and documents to support the pharmacists in their
03:28:59 17 knowledge.

03:29:01 18 Q. And do you think that performing this work is important to
03:29:05 19 public safety and public health?

03:29:07 20 A. I think that all the work we do is important.

03:29:09 21 Q. But is it important to patient safety and public health?

03:29:13 22 A. I would agree with that.

03:29:17 23 Q. Do you agree with me that there's an opioid epidemic in the
03:29:20 24 United States?

03:29:21 25 A. I don't know what the exact definition of epidemic is. I'm

Travassos (By Video Deposition)

03:29:27 1 not a medical doctor, but I do agree opioid misuse is a serious
03:29:32 2 issue.

03:29:34 3 Q. And it impacts families in every state and all communities
03:29:38 4 across the country and in Ohio. Would you agree with that?

03:29:40 5 A. I would agree that it's an important issue for everyone to
03:29:44 6 be aware of. Whether it impacts every city within every state,
03:29:52 7 I can't speak to.

03:29:53 8 Q. Would you agree that the abuse of prescription drugs
03:29:57 9 transcends all walks of life and is present in all communities
03:30:00 10 across the country?

03:30:02 11 A. It may have been characterized as such.

03:30:06 12 Q. Do you agree with that?

03:30:08 13 A. Again, I can't say definitively here today that it does,
03:30:13 14 but I know it has a large impact.

03:30:18 15 Q. Ms. Travassos, this is an e-mail you wrote on April 25th,
03:30:22 16 2016; right?

03:30:23 17 A. Yes.

03:30:24 18 Q. Okay. And in the first line of that e-mail it reads: "The
03:30:31 19 abuse of prescription drugs transcends all walks of life and is
03:30:37 20 present in all communities across the nation."

03:30:39 21 Is that what you wrote?

03:30:41 22 A. So that is what is in this document.

03:30:44 23 Q. Okay. And this is the document that you e-mailed; correct?

03:30:49 24 A. Correct.

03:30:50 25 Q. It next states that "The Center for Disease Control and

Travassos (By Video Deposition)

03:30:53 1 prevention, the CDC, has determined that the United States is
03:30:58 2 undergoing an epidemic of deaths as the result of prescription
03:31:03 3 drug abuse."

03:31:03 4 Did I read that correctly?

03:31:05 5 A. Yes.

03:31:06 6 Q. Did CVS play a role in the opioid epidemic in Lake and
03:31:18 7 Trumbull counties in Ohio?

03:31:19 8 A. I don't know.

03:31:20 9 Q. Ms. Travassos, I'm going to have you pull back up
03:31:25 10 Exhibit 2 -- oh, no, I'm sorry, Exhibit 1, which is MR902. We
03:31:29 11 looked at this previously. And I'm going to have you turn to
03:31:41 12 Page 14 of the document which relates to your responsibilities.

03:31:44 13 It lists first PMP. What is PMP?

03:31:49 14 A. Prescription monitoring program.

03:31:53 15 Q. And what is a prescription monitoring program?

03:31:57 16 A. It is a statewide, state-run database that is a collection
03:32:06 17 of controlled substance prescriptions that have been dispensed
03:32:11 18 within the state for individuals.

03:32:13 19 Q. All right. And that was part of your responsibility
03:32:15 20 starting in 2013; is that right?

03:32:19 21 A. My responsibility was to provide access to the pharmacists
03:32:27 22 as these various states were putting these PMP programs into
03:32:35 23 place.

03:32:38 24 Q. And we're going to talk about this in more detail, but the
03:32:41 25 access that CVS provided to its pharmacists to access the PMP

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03:32:49 1 system, was that through CVS's computer program or was it an
03:32:53 2 independent search on each state's PMP?

03:32:56 3 A. There would have been a link on the CVS intranet.

03:33:02 4 Q. Okay. And that intranet, is that called RXNet?

03:33:07 5 A. Yes.

03:33:08 6 Q. And, in fact, the only way a CVS pharmacist was permitted
03:33:11 7 to access the PMP was through RXNet; is that right?

03:33:14 8 A. At the time that is correct.

03:33:16 9 Q. Why did CVS want its pharmacists to only access the PMP
03:33:21 10 through RXNet as opposed to just running a search on the
03:33:24 11 internet?

03:33:31 12 A. I don't think they could access the internet from the
03:33:36 13 computer.

03:33:36 14 Q. Okay. So CVS pharmacists didn't have access to the
03:33:39 15 internet in their pharmacy, the only access that was permitted
03:33:43 16 was through CVS's intranet; is that right?

03:33:47 17 A. There were various internet licensing based on RXNet, but
03:33:56 18 insofar as a search for anything, correct, they could not.

03:34:01 19 Q. Do you think it would have been helpful for pharmacists to
03:34:03 20 be able to look up different information about prescribers
03:34:07 21 through the internet as part of their due diligence process?

03:34:11 22 A. I don't know.

03:34:13 23 Q. It's one of the tools that you used in the prescriber
03:34:16 24 monitoring program to access information on prescribers was to
03:34:18 25 look up public information on the internet; correct?

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03:34:22 1 A. Yeah, I only did that for a short while prior to that
03:34:26 2 program transitioning from me.

03:34:31 3 Q. I understand that, but you -- but as part of the prescriber
03:34:34 4 monitoring program, you did access the internet to do searches
03:34:38 5 on prescribers for publicly available information; correct?

03:34:44 6 A. Correct.

03:34:45 7 Q. So it was a useful tool in the prescriber monitoring
03:34:51 8 program to collect information to see if a prescriber had been
03:34:52 9 indicted or if there was some investigation related to them, if
03:34:54 10 there were lawsuits related to their prescribing practices, all
03:35:00 11 of which could be available in public information; right?

03:35:02 12 A. Yes.

03:35:02 13 Q. And so that was information you used in the prescriber
03:35:06 14 monitoring program, but it was not information that the
03:35:09 15 pharmacists could access in the internet at CVS; correct?

03:35:11 16 A. Yes. I don't think they could access it through the
03:35:14 17 computer system.

03:35:15 18 Q. If we go next, under Compliance, it lists RX regulatory
03:35:20 19 audit launch.

03:35:22 20 What is this program?

03:35:27 21 A. This was a program that was related to compliance that
03:35:32 22 pharmacists would have to answer questions.

03:35:36 23 Q. Questions related to what?

03:35:40 24 A. Compliance.

03:35:43 25 Q. Tell me what form these kind of audits would take.

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03:35:46 1 A. It was a computer audit, if you will.

03:35:50 2 Q. So they had to -- was it like a test you had to do online?

03:35:57 3 A. It was not a test. It was asking the state of their

03:36:05 4 pharmacy practice within their store.

03:36:07 5 Q. Okay. And was that done internally by your department or

03:36:12 6 did you use an outside auditor?

03:36:20 7 A. It evolved over time, so both.

03:36:24 8 Q. Please explain to me that evolution.

03:36:30 9 A. Initially --

03:36:32 10 MR. LANIER: Your Honor -- Your Honor, I've asked Dan

03:36:36 11 to pause this.

03:36:38 12 I don't know if there's -- if Mr. Pitts able to take

03:36:43 13 out the empty courtroom seat and make the screen bigger.

03:36:48 14 COURTROOM DEPUTY: I just -- I just texted the IT

03:36:52 15 person because I don't know if I touch something what will

03:36:54 16 happen, so he's going to come up.

03:36:55 17 THE COURT: All right. We'll try and work on it.

03:36:59 18 MR. LANIER: Thank you, Judge.

03:37:00 19 THE COURT: Okay.

03:37:01 20 MR. LANIER: Just trying to see it.

03:37:18 21 THE WITNESS: Initially, pharmacists would do the

03:37:20 22 audit and the pharmacy supervisor would also do the audit. And

03:37:25 23 then over time the pharmacy supervisor's audit it was

03:37:30 24 transitioned to an out outside agency.

03:37:30 25 BY MR. LANIER:

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03:37:35 1 Q. What agency was that?

03:37:39 2 A. Again, that was another evolution. Initially it was two
03:37:42 3 agencies, Crossmark and ASM, and then over time it transitioned
03:37:51 4 to ASM, solely.

03:37:54 5 Q. And when Crossmark and ASM performed an audit, would they
03:37:59 6 actually visit a store to conduct the audit?

03:38:03 7 A. Yes.

03:38:05 8 Q. And would they issue reports as a result of their audits?

03:38:10 9 A. Yes.

03:38:11 10 Q. How often were the audits performed?

03:38:14 11 A. Monthly.

03:38:17 12 Q. And who would have -- who would the reports be sent to when
03:38:22 13 they were completed?

03:38:28 14 A. Let me clarify my last answer because it may have been
03:38:31 15 quarterly, so I don't want to say definitively it was monthly.

03:38:34 16 Q. Okay. I'm going to turn now to the controlled substance
03:38:40 17 dispensing program that you were responsible for at CVS.

03:38:47 18 Is it true that this -- when was this program
03:38:52 19 implemented at CVS?

03:38:53 20 A. It was in place prior to myself joining the team.

03:38:58 21 Q. So in 2012 it was in place; is that right?

03:39:03 22 A. Correct.

03:39:03 23 Q. Okay. And this was a program to identify stores with risky
03:39:12 24 dispensing habits; is that right?

03:39:13 25 A. I wouldn't characterize it that way.

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03:39:17 1 Q. Let me pull out MR83 for me, please.

03:39:23 2 If you see in the -- this is an overview of the
03:39:26 3 programs from February 21st, 2013. If you see under stores, or
03:39:31 4 under Store, sorry, the objective reads, "To proactively
03:39:38 5 identify stores with risky dispensing habits based on multiple
03:39:42 6 red flags across a variety of metrics."

03:39:45 7 Did I read that correctly?

03:39:48 8 A. You've read that correctly.

03:39:50 9 Q. And this program came after the DEA had issued immediate
03:39:57 10 suspension orders that we discussed earlier for two CVS
03:40:02 11 pharmacies in Florida in 2012; correct?

03:40:07 12 A. I'm not aware of that because I'm -- I joined the team, it
03:40:10 13 was already in place, so I don't know where -- when it started,
03:40:14 14 the specific date.

03:40:15 15 Q. Can you describe for me your role with respect to the
03:40:20 16 controlled substance dispensing program?

03:40:21 17 A. My role is to administer the program, to receive the
03:40:31 18 quarterly output and review the stores that were identified and
03:40:41 19 enter them into the program and make -- currently make sure the
03:40:46 20 field leaders -- currently it's DPPLs -- aware of what stores
03:40:51 21 need a visit and the information we need back as a result of
03:40:56 22 that visit.

03:40:58 23 Q. And under the controlled substance dispensing program,
03:41:01 24 there's an algorithm that's run on a quarterly basis on all
03:41:06 25 stores dispensing opioids; correct?

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03:41:08 1 A. Correct.

03:41:11 2 Q. And the recruiter to evaluate high risk stores included
03:41:17 3 volume; is that right?

03:41:18 4 A. I wouldn't characterize them as high risk stores. It's a
03:41:24 5 proactive program meant to identify stores with outlier
03:41:28 6 characteristics of dispensing.

03:41:30 7 Q. Thank you. I misspoke.

03:41:32 8 What I meant to say was that the criteria was to
03:41:35 9 evaluate high risk drugs for each store. And in considering
03:41:40 10 those drugs, it would look at the volume of those drugs; is
03:41:48 11 that right?

03:41:48 12 A. That is one of the metrics that is considered.

03:41:51 13 Q. Okay. And volume is how many drugs; right?

03:41:56 14 A. How many units, yes, correct.

03:42:00 15 Q. Okay. And the high risk drugs included oxycodone and
03:42:05 16 hydrocodone; is that right?

03:42:08 17 A. That is correct.

03:42:11 18 Q. And so CVS recognized that these were high risk drugs that
03:42:15 19 required review of its stores' dispensing practices; correct?

03:42:22 20 A. The program monitors these drugs of concern, if you will,
03:42:35 21 but I can't speak to CVS corporate.

03:42:42 22 Q. Well, you were in charge of the program for CVS; right?

03:42:44 23 A. Yes. I administer the program.

03:42:47 24 Q. You administer the program. You were the person in charge.
03:42:50 25 And in addition to the volume of high risk drugs, the

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03:42:56 1 algorithm also evaluated the share of those high-risk drugs
03:43:01 2 compared to the non-high-risk drugs; correct?
03:43:04 3 A. To overall prescriptions, yes.
03:43:08 4 Q. Okay. And it also measured the growth of those high-risk
03:43:11 5 drugs over time; correct?
03:43:14 6 A. Correct.
03:43:15 7 Q. And would you agree with me that the program was seeking to
03:43:19 8 identify stores with dispensing programs that are -- that are
03:43:24 9 significantly outside of the median?
03:43:28 10 A. It compares stores against other stores within their
03:43:33 11 relative geography to identify those outside of the mean.
03:43:39 12 Q. But significantly outside the median; right?
03:43:41 13 A. It uses statistical -- it uses a statistical method to --
03:43:47 14 to determine what is outside the mean, but I can't speak
03:43:51 15 specifically to that analytical aspect.
03:43:55 16 Q. Well, let's look at MR915, please.
03:43:59 17 We'll mark this as Exhibit 6.
03:44:01 18 And I'm going to focus on the e-mail on the bottom,
03:44:05 19 which is dated October 30th, 2013, from Amanda -- is it Dubois?
03:44:12 20 A. Dubois.
03:44:13 21 Q. Dubois.
03:44:13 22 UNIDENTIFIED SPEAKER: Work on your French.
03:44:13 23 BY MR. ELSNER:
03:44:13 24 Q. I'm going to try to avoid saying that as often as I can.
03:44:24 25 I just asked you if the subject line was updates to

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03:44:27 1 the CSDP for the SOP, correct?

03:44:27 2 A. Yes, correct.

03:44:28 3 Q. Okay. And an SOP is a standard operating procedures;

03:44:34 4 right?

03:44:35 5 A. Correct.

03:44:36 6 Q. And if you go down to the third dash, it says, "Stores

03:44:47 7 significantly outside the median." Correct?

03:44:53 8 A. Correct.

03:44:54 9 Q. Okay. And these are stores with potential high-risk

03:45:00 10 dispensing behavior that enter the CSDP; correct?

03:45:08 11 A. That's how it's characterized here.

03:45:10 12 Q. And, in fact, it says, in the first line, "Hi, Cassandra,

03:45:15 13 please find our process for stores entering the CSDP below."

03:45:20 14 Do you see that?

03:45:21 15 A. Yes.

03:45:22 16 Q. Who is responsible for setting the algorithm to -- so that

03:45:28 17 it identified those significantly outside the median?

03:45:33 18 A. The thresholds were reviewed occasionally to determine if

03:45:42 19 they needed to change. It would have been collaboration.

03:45:46 20 Q. But that decision was the decision CVS made; correct?

03:45:54 21 A. It would have been a decision between analytics, myself,

03:45:59 22 and Nicci would have been aligned.

03:46:01 23 Q. In April of 2013, the controlled substance dispensing

03:46:08 24 program flagged about 56 stores.

03:46:09 25 Does that sound about right?

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03:46:10 1 A. Honestly I couldn't say, I don't remember.

03:46:14 2 Q. Okay. Well, let's look at MR918, and we will mark that as
03:46:19 3 Exhibit 7.

03:46:20 4 Ms. Travassos, this is a CVS memo, and I'm going to --
03:46:27 5 the subject line is "Quarter 2 stores entering the controlled
03:46:31 6 substance dispensing program."

03:46:31 7 Do you see that?

03:46:35 8 A. I do.

03:46:36 9 Q. Okay. And you're listed as the contact person in
03:46:40 10 professional practices; correct?

03:46:42 11 A. Correct.

03:46:43 12 Q. And this is to all senior vice presidents and area vice
03:46:46 13 presidents of CVS?

03:46:51 14 A. Yes.

03:46:52 15 Q. Okay. And it reads in the second paragraph, "Based on the
03:46:56 16 latest controlled substance dispensing review on April 1st,
03:47:01 17 2013, 56 stores have flagged as outliers in their dispensing of
03:47:06 18 one or more of the drugs of concern."

03:47:08 19 Did I read that correctly?

03:47:09 20 A. You did.

03:47:12 21 Q. And at the time, CVS had over 7,600 stores in 2013 as we
03:47:20 22 discussed earlier; correct?

03:47:21 23 A. Correct.

03:47:21 24 Q. So this is a very small number of stores, less than
03:47:25 25 1 percent of CVS stores being flagged through this program;

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03:47:29 1 correct?

03:47:30 2 A. Correct.

03:47:31 3 Q. And the purpose of this program is to ensure that the
03:47:37 4 pharmacy team is following the CVS corporate dispensing
03:47:42 5 guidelines; is that right?

03:47:45 6 A. Yes. It's a program to proactively look at the processes
03:47:57 7 at the store level to make sure there aren't any gaps in
03:48:01 8 processes, and to understand the metrics and what is driving
03:48:05 9 them.

03:48:06 10 Q. And to adhere to the corporate, CVS corporate, dispensing
03:48:11 11 guidelines?

03:48:12 12 A. Yes. That's fair.

03:48:13 13 Q. Okay. And that's what's written in the memo; correct?

03:48:19 14 A. That's correct.

03:48:22 15 Q. Okay. So CVS created this program to measure and make sure
03:48:29 16 that its pharmacists were exercising their corresponding
03:48:33 17 responsibility according to CVS's corporate guidelines;
03:48:36 18 correct?

03:48:37 19 A. The purpose of the program is to -- is one way to have --
03:48:44 20 you know, provide education to the pharmacists and have field
03:48:49 21 management review their -- their processes to ensure they're --
03:48:58 22 they are adhering to corporate dispensing guidelines and their
03:49:02 23 federal corresponding responsibility.

03:49:05 24 Q. So when a store was flagged as an outlier under this
03:49:09 25 program, regional managers and then district managers received

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03:49:14 1 some confidential information concerning the flagged store; is
03:49:17 2 that right?

03:49:17 3 A. Yes. They were made aware.

03:49:20 4 Q. Okay. And they were asked not to forward or distribute
03:49:35 5 this information to others; correct?

03:49:43 6 A. Correct.

03:49:43 7 Q. And the point was to keep that information about that
03:49:45 8 store's dispensing practices confidential; correct?

03:49:59 9 A. I can't speak to why it was advised that we put that in
03:50:05 10 there. That was something that was advised.

03:50:11 11 Q. Okay. And, in fact, the memo reads, "The attached file,"
03:50:15 12 and then it bold it says, "Do not forward or distribute. List
03:50:18 13 each pharmacy identified with high-risk dispensing behavior";
03:50:28 14 correct?

03:50:28 15 A. It does say that, yes.

03:50:30 16 Q. And then attached to this document -- we're not going to go
03:50:32 17 through it necessarily in great detail now, but I just want to
03:50:35 18 make sure we're -- we discuss it. Attached to this is a chart
03:50:43 19 which lists the varies store that were -- that were triggered
03:50:52 20 by the algorithm; correct?

03:50:55 21 A. Yes.

03:51:02 22 Q. Okay. And this is the information that was not to be
03:51:04 23 forwarded or distributed; correct?

03:51:15 24 A. Correct.

03:51:15 25 Q. And for the stores that were entered into the tier 1

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03:51:22 1 program as outliers, they -- the pharmacy supervisors and
03:51:28 2 regional loss prevention managers were required to attend a
03:51:32 3 one-hour webinar; correct?

03:51:36 4 A. They were asked to attend, yes.

03:51:38 5 Q. And then -- and the purpose of this presentation was to
03:51:47 6 instruct the pharmacy supervisors and regional loss prevention
03:51:52 7 managers of the corresponding responsibilities and describe the
03:51:56 8 controlled substances dispensing program; correct?

03:52:00 9 A. The purpose the webinar was to provide education why the
03:52:03 10 store had been identified and what they were to do, correct.

03:52:08 11 Q. And then they were required do a store visit; is that
03:52:12 12 right?

03:52:12 13 A. That's right.

03:52:13 14 Q. Okay. And they were requested to perform a controlled
03:52:27 15 substance audit and education for the store team; is that
03:52:31 16 right?

03:52:31 17 A. That's correct.

03:52:33 18 Q. And then all of this information was due to be reported
03:52:35 19 back to the professional practice team and to you, in fact, in
03:52:39 20 30 days; right?

03:52:41 21 A. Correct.

03:52:43 22 Q. Now, if you look at the attachment to this document again
03:52:47 23 that we looked at, one of the stores about halfway down in the
03:52:51 24 program was from Warren, Ohio, Store 4606.

03:52:56 25 This is Store 4606 in Warren, Ohio.

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03:52:59 1 Do you see that, Ms. Travassos?

03:53:01 2 A. I do.

03:53:04 3 Q. And if we go across the chart, this store was triggered --

03:53:14 4 triggered the algorithm based on its volume of high-risk drugs

03:53:19 5 of hydrocodone; correct?

03:53:22 6 A. Based upon its volume, yes.

03:53:24 7 Q. And the share of hydrocodone compared to non-controlled

03:53:29 8 drugs dispensed from that pharmacy; is that right?

03:53:31 9 A. That's correct.

03:53:33 10 Q. And then there were some red flags that were analyzed as

03:53:37 11 part of this process as well; correct?

03:53:40 12 A. Potential red flags.

03:53:43 13 Q. And for this particular store, it included in this

03:53:50 14 algorithm run age; is that right?

03:53:54 15 A. Yes.

03:53:56 16 Q. And what was the criteria for age under the program?

03:54:05 17 A. The criteria for age is individuals between the ages of 18

03:54:11 18 and 35.

03:54:14 19 Q. And why were individuals between the ages of 18 and 35

03:54:19 20 selected as potential red flags of diversion?

03:54:29 21 A. That was deemed the age group where typically one can be

03:54:37 22 thought of as being relatively healthy.

03:54:40 23 Q. And so if someone was in that age group, presumably they'd

03:54:44 24 be relatively healthy. And if they were getting large numbers

03:54:47 25 of prescriptions for hydrocodone or other opioids, it may be an

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03:54:51 1 indicator of diversion; correct?

03:54:53 2 A. It may be an indicator that it would require follow-up.

03:54:58 3 Q. Because it may be a sign of diversion; correct?

03:55:03 4 A. Potentially that's fair.

03:55:06 5 Q. Okay. And that's what a red flag is; right? It's a

03:55:09 6 potential sign of diversion; correct?

03:55:12 7 A. A red flag is a potential sign of diversion, something

03:55:19 8 requiring following up, yes.

03:55:21 9 Q. Okay. And this particular store in Warren, Ohio, also

03:55:26 10 triggered the algorithm for cocktail; is that right?

03:55:32 11 A. Yes, that is what this says.

03:55:35 12 Q. And how is cocktail defined in the program?

03:55:42 13 A. I don't know the specific definition of cocktail at the

03:55:48 14 time, as it's changed over time.

03:55:52 15 Q. But would you agree that a cocktail would include an

03:55:55 16 opioid, a benzo, and a muscle relaxer?

03:55:59 17 A. I would agree that is definitely a -- considered a

03:56:08 18 cocktail. I'm not sure what the algorithm considered at this

03:56:11 19 time, though?

03:56:11 20 Q. Okay. And is a combination of those drugs together, does

03:56:15 21 that pose a danger to the patient?

03:56:23 22 A. Potential.

03:56:25 23 Q. Why?

03:56:32 24 A. A cocktail or a combination of such medications can have

03:56:38 25 heightened side effects that could be an issue.

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03:56:43 1 Q. Such as?

03:56:44 2 A. I can't say all of them, I'm not a doctor, but respiratory
03:56:50 3 depression, sedation.

03:56:52 4 Q. What about an opioid and a benzo? Would you agree that
03:56:59 5 that presents a respiratory risk to the patient and is a red
03:57:03 6 flag as well?

03:57:07 7 A. I would agree it's a potential red flag, depending on the
03:57:11 8 circumstance.

03:57:13 9 Q. And what about an opioid and a muscle relaxer together? Is
03:57:17 10 that a red flag?

03:57:27 11 A. Potentially.

03:57:28 12 Q. Okay. And so in addition to age and cocktail, this store
03:57:38 13 in Warren, Ohio, also triggered for only controls.

03:57:42 14 What does only controls refer to?

03:57:47 15 A. Only controls refers to individuals that, over the course
03:57:58 16 that the algorithm -- the time period that the algorithm looks
03:58:01 17 at, would have filled only controls. Medications.

03:58:08 18 Q. All right. Now, when this store was identified in the
03:58:16 19 controlled substance dispensing program, would a case be opened
03:58:19 20 related to this store in Archer?

03:58:21 21 A. Yes.

03:58:22 22 Q. Okay. And were you responsible for opening those cases?

03:58:27 23 A. It would have been myself or someone who worked with me.

03:58:33 24 Q. What information would you enter into Archer related to
03:58:36 25 this program and each store in particular?

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03:58:39 1 A. I think it's fair to say it changed over time, but
03:58:48 2 typically you would enter in the store number, what the flag --
03:58:51 3 what drug had flagged in the algorithm, and the characteristics
03:58:57 4 that were considered outliers.

03:59:00 5 Q. Were the results of the audit performed at the store that
03:59:03 6 was part of the program, would that be entered into Archer?

03:59:09 7 A. It would be uploaded into Archer by the loss prevention
03:59:15 8 team.

03:59:18 9 Q. Okay. Any other information entered into Archer? Is there
03:59:23 10 any kind of summary or report that's also entered?

03:59:32 11 A. The pharmacy supervisor would make observations and
03:59:35 12 recommended actions. There were affirmations of corresponding
03:59:45 13 responsibility uploaded, potentially a report related to the
03:59:51 14 store. I'm sorry.

03:59:56 15 Q. I'm sorry. I thought you were finished.

03:59:59 16 Is that it?

04:00:00 17 A. Yes.

04:00:00 18 Q. Okay. That affirmation of corresponding responsibility,
04:00:05 19 who was affirming?

04:00:10 20 A. Each pharmacist.

04:00:11 21 Q. So you had them sign a form that they -- that they what,
04:00:15 22 acknowledge their corresponding responsibility?

04:00:18 23 A. That they understood their corresponding responsibility.

04:00:21 24 Q. Okay. So it's basically they just -- explain to me what's
04:00:26 25 on the form.

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04:00:30 1 A. I don't recall it word for word to say what's in "I
04:00:37 2 acknowledge" form related to their responsibility.

04:00:41 3 Q. Okay. So it's basically: I, whoever the pharmacist, I
04:00:44 4 acknowledge my corresponding responsibility under the
04:00:48 5 Controlled Substances Act, or something like that, and then
04:00:50 6 they sign their name.

04:00:52 7 Is that basically it?

04:00:53 8 A. Yes, they sign it and print their name.

04:00:56 9 Q. As a result of the program, the supervisors would do a
04:01:01 10 one-hour webinar. Then there would be an audit of the store.
04:01:06 11 The pharmacist would promise to follow their corresponding
04:01:09 12 responsibilities and sign an affirmation. The pharmacy
04:01:13 13 supervisor would make some kind of recommendation, and then the
04:01:16 14 file would be closed -- then they would -- the file would be
04:01:19 15 closed; is that right?

04:01:24 16 A. No. At the -- after the LP individual did the audit, the
04:01:31 17 pharmacy supervisor would provide education to the store team,
04:01:38 18 would, you know, review information with the pharmacists, and
04:01:43 19 together with the pharmacy manager, pharmacist in charge, they
04:01:49 20 would come up actionable items that the store could follow to
04:01:53 21 support, you know, the exercise of corresponding responsibility
04:01:59 22 in the form of an action plan. And that information would be
04:02:04 23 forwarded to us to upload into Archer.

04:02:11 24 Q. And then you would upload that into Archer; is that right?

04:02:14 25 A. Correct.

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04:02:14 1 Q. And who has access to Archer at CVS?

04:02:25 2 A. There are various groups that have access to Archer. I
04:02:30 3 couldn't say all of the folks who have access. There are
04:02:35 4 different levels of access.

04:02:37 5 Q. Okay. Well, the pharmacy professional practice team has
04:02:40 6 access; is that right?

04:02:45 7 A. I don't know that everybody has access, but, yes.

04:02:49 8 Q. Okay. Fair enough.

04:02:50 9 What about individual pharmacists in the pharmacy?

04:02:53 10 Would they be able to access the Archer file on their pharmacy?

04:03:00 11 A. No.

04:03:02 12 Q. So the pharmacists wouldn't be able to access the
04:03:06 13 information related to their own pharmacy in the controlled
04:03:11 14 substance dispensing program; correct?

04:03:12 15 A. They had access to the action plan that was created that
04:03:16 16 they would subsequently act on.

04:03:22 17 Q. Did they have access to the audit?

04:03:31 18 A. Not through Archer.

04:03:37 19 Q. Did they have access to the data that triggered the
04:03:40 20 algorithm in the controlled substance dispensing program?

04:03:43 21 A. Only from the standpoint of what the field leader would
04:03:48 22 discuss with them when they were in the store visit.

04:03:52 23 Q. Okay. But they couldn't access through Archer the report
04:03:55 24 on the algorithm and those factors which triggered their
04:04:01 25 entrance into the program through Archer; correct?

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04:04:05 1 A. Correct.

04:04:06 2 Q. I want to turn to MR921, if we could.

04:04:13 3 This is Exhibit 8 to the deposition.

04:04:22 4 Can you describe for me what this report is?

04:04:34 5 A. This report is a dashboard in relation to Store 4606.

04:04:44 6 Q. And who would -- how would this report be generated, and
04:04:50 7 who would have access to it?

04:04:50 8 A. It's generated through an analytical program. Our team
04:04:57 9 would have access to it, and the pharmacy supervisor conducting
04:05:04 10 the visit and the RLPM conducting the visit would have been on
04:05:10 11 the same e-mail that received this dashboard.

04:05:16 12 Q. And this is part of the confidential information that they
04:05:18 13 would have received; is that right?

04:05:20 14 A. Yes.

04:05:22 15 Q. And, so, if we look for Store 4606, it was entered into
04:05:33 16 tier 1 for hydro; is that right?

04:05:37 17 A. Correct.

04:05:38 18 Q. All right. And the store percentile for volume was
04:05:42 19 97 percent; is that right?

04:05:44 20 A. Correct.

04:05:45 21 Q. And the store was triggered by the algorithm because its
04:05:48 22 share for hydrocodone, that opioid, was at the 99 percent; is
04:05:57 23 that right?

04:05:57 24 A. Correct.

04:05:57 25 Q. Okay. And the growth here was at 87 percent; is that

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04:06:05 1 right?

04:06:05 2 A. Correct.

04:06:07 3 Q. Cash was at 91 percent; is that right?

04:06:11 4 A. Correct.

04:06:11 5 Q. What does that mean, 91 percent?

04:06:16 6 A. It's a statistical measurement of comparing this store
04:06:25 7 against other stores within the relative geography. I don't
04:06:34 8 know the exact calculation to come up with the 91 percent.

04:06:39 9 Q. Even if you did, I wouldn't ask you to list it.

04:06:43 10 A. That's good.

04:06:45 11 Q. But it is -- it is measuring and it is calculating what
04:06:50 12 percentage of cash transactions this store had to all other
04:06:56 13 stores in the same region; correct?

04:07:02 14 A. Right. That's not to say that 91 percent of the hydro
04:07:09 15 prescriptions were filled as cash. It's a measurement against
04:07:11 16 the other stores in the relative region.

04:07:13 17 Q. Right. And compared to all of those other stores, this
04:07:16 18 store was in the 91st percentile; correct?

04:07:19 19 A. Correct.

04:07:23 20 Q. Okay. And for age, it was in the 93rd percentile?

04:07:25 21 A. Correct.

04:07:25 22 Q. And for cocktail, in the 99th percentile?

04:07:30 23 A. Correct.

04:07:31 24 Q. And only controls, meaning only hydrocodone prescriptions,
04:07:37 25 was in the 96th percentile?

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04:07:40 1 A. Only controls is 96, correct.

04:07:49 2 Q. I believe I misspoke. I believe at this time in order to
04:07:53 3 qualify for a tier 1 store, the store must be in the 95th
04:07:57 4 percentile for pill volume, share, or relative growth.

04:08:00 5 Does that sound correct to you?

04:08:03 6 A. I don't recall the specific threshold.

04:08:06 7 Q. But these thresholds were set at -- by CVS; correct?

04:08:10 8 A. These thresholds were initially set by AGI, I want to say,
04:08:18 9 and then over time, you know, in collaboration with analytics
04:08:23 10 and senior leaders, they have been adjusted.

04:08:28 11 Q. AGI is an outside consulting group that CVS hired to
04:08:33 12 develop this algorithm; is that right?

04:08:38 13 A. That's correct.

04:08:41 14 Q. And -- but if CVS wanted to do so, they could have lowered
04:08:45 15 the volume share to 75 percent; right?

04:08:50 16 A. In collaboration with analytics and, you know, senior
04:08:56 17 leadership, we could make adjustments if the group felt it was
04:09:02 18 necessary.

04:09:06 19 Q. So you could have -- you could have lowered it to
04:09:11 20 80 percent if everyone agreed; correct?

04:09:14 21 A. Theoretically, yes, we could have.

04:09:24 22 Q. Ms. Travassos, you participated in an action plan for this
04:09:30 23 store, and I want to show you an e-mail related to that
04:09:32 24 investigation. It's MR922, which I'll mark as Exhibit 9.

04:09:37 25 This is an e-mail from -- from you to -- dated

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04:09:43 1 March 21st, 2014, related to Store 4606 and the controlled
04:09:51 2 substance dispensing program follow-up quarter 1.

04:09:53 3 Do you see that?

04:09:59 4 A. Yes.

04:10:01 5 Q. Okay. And it's actually a follow-up to an e-mail that you
04:10:03 6 sent, which is just below it, on March 5th, 2014.

04:10:08 7 Do you see that?

04:10:14 8 A. Yes.

04:10:16 9 Q. And it reads in the second sentence, says, "Part of the
04:10:21 10 documentation, the RLPM," that's the regional loss prevention
04:10:28 11 manager, "listed, he called out two physicians of concern on
04:10:32 12 the audit sheet, Dr. Torres and Dr. Veres."

04:10:36 13 Do you see that?

04:10:36 14 A. I do.

04:10:37 15 Q. "And the comments were that these two physicians were
04:10:40 16 contributing 70, 80 percent of the store's hydrocodone volume."

04:10:43 17 Do you see that?

04:10:45 18 A. Yes.

04:10:49 19 Q. So for this store, the hydrocodone volume that we just
04:10:54 20 looked at was at the 97th percentile of all other stores in
04:10:59 21 that region, and these two prescribers were responsible for 70,
04:11:04 22 80 percent of all of those hydrocodone prescriptions; correct?

04:11:10 23 A. That's -- that is what this e-mail states.

04:11:18 24 Q. And then you wrote that "From a corporate perspective,
04:11:21 25 we'll review the metrics on these physicians," which is a few

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04:11:26 1 sentences down.

04:11:27 2 Do you see that?

04:11:38 3 A. Yes, I see that.

04:11:41 4 Q. And so the store report that we looked at at this point in
04:11:45 5 time had not been shared with the pharmacists; correct?

04:11:52 6 A. I can't say -- I wasn't on the visit -- whether it was
04:11:56 7 shared or not.

04:11:59 8 Q. And CVS corporate didn't give the pharmacists in Store 4606
04:12:05 9 a specific warning regarding filling prescriptions for
04:12:10 10 Dr. Torres and Dr. Veres; correct?

04:12:13 11 A. Typically, during a visit, physicians that contribute the
04:12:19 12 largest quantity of that drug that they're on the visit for
04:12:27 13 would be reviewed, so it may have been covered in that
04:12:36 14 instance, but I wasn't there so I don't know, you know,
04:12:41 15 specifically what was discussed.

04:12:42 16 Q. There was nothing in this information that suggests that
04:12:45 17 the pharmacists were told to be on the lookout for
04:12:48 18 prescriptions from these two prescribers even though they were
04:12:55 19 contributing 70 to 80 percent of the store's total hydro
04:13:01 20 volume?

04:13:01 21 A. They were told that they need to exercise corresponding
04:13:01 22 responsibility with every prescription that they dispense, and
04:13:03 23 if there's any concern that they should refuse to fill.

04:13:06 24 Q. They were told what they were told all of the time by CVS
04:13:10 25 corporate, which is follow your corresponding responsibility

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04:13:13 1 with every single prescription, but they're not given any
04:13:16 2 specific warning here about Dr. Torres or Dr. Veres, it's just
04:13:20 3 the general "follow the corresponding responsibility"; right?
04:13:23 4 A. And the indication that it would be passed to the
04:13:26 5 prescriber team for review.

04:13:28 6 Q. Well, you told the pharmacy supervisor that, but there's no
04:13:34 7 indication that that was conveyed to the pharmacists; right?

04:13:42 8 A. I can't say what was said at the visit, but the pharmacy
04:13:43 9 supervisors were made aware during the webinar that they, you
04:13:47 10 know, they should bubble up any concerns, you know, we -- the
04:13:57 11 prescribe outreach team, monitoring team, would review any
04:14:00 12 prescribers that arose that were of, you know, concern or
04:14:10 13 noteworthy, if you will.

04:14:11 14 Q. Right. But the guidance that you gave in your e-mail to
04:14:14 15 the pharmacy supervisor was general. "It would be good to
04:14:18 16 remind the pharmacists that they must always exercise their
04:14:21 17 professional judgment with each and every prescription they
04:14:24 18 fill, particularly with controlled substances."

04:14:25 19 There's no specific instruction to the pharmacy
04:14:28 20 supervisor to -- to warn the pharmacists about Dr. Torres and
04:14:36 21 Dr. Veres given their high hydrocodone prescribing practices;
04:14:40 22 correct?

04:14:41 23 A. Yeah, I -- I believe the intention was to let them know, to
04:14:45 24 let the pharmacy supervisor know, that these doctors were
04:14:49 25 distributing a high volume, but the pharmacists are responsible

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04:14:54 1 to exercise corresponding responsibility.

04:15:00 2 Q. And there's no instruction from CVS not to fill these
04:15:03 3 prescriptions, and there's no indication that these two
04:15:05 4 prescribers would be suspended by CVS. You were merely going
04:15:08 5 to investigate them; correct?

04:15:09 6 A. This communication was to inform the pharmacy supervisor
04:15:13 7 that these doctors would be passed to the prescriber monitoring
04:15:17 8 team for review, and the pharmacists would need to continue
04:15:25 9 exercising corresponding responsibility.

04:15:28 10 Q. And your follow-up note to the pharmacy supervisor in the
04:15:34 11 e-mail above was, "Once you have a chance to reinforce with the
04:15:39 12 pharmacy team of Store 4606, once confirmed, we'll be able to
04:15:45 13 close out the case"; correct?

04:15:47 14 A. That's what it states.

04:16:00 15 Q. But this is not the first time that Store 4606 had been
04:16:01 16 identified by the controlled substance dispensing program. If
04:16:05 17 we look at MR923, it was in the program earlier; correct?

04:16:33 18 This is Exhibit 10. Mark it for the record, please.

04:16:37 19 Ms. Travassos, this is the analysis of new stores
04:16:40 20 entering the program in 2013.

04:16:42 21 Do you see that?

04:16:47 22 A. I see that.

04:16:48 23 Q. Okay. And if we turn to the second page of this document,
04:16:56 24 in the first two columns, these are new stores entering the
04:16:59 25 CSDP in the second quarter of 2013, drugs of concern. And

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04:17:03 1 under hydrocodone, Store 4606 is listed in both charts. This
04:17:13 2 indicates that this particular store had previously been in the
04:17:16 3 controlled substance dispensing program prior to 2014; correct?

04:17:24 4 A. I don't think I've ever seen this document before, or I
04:17:29 5 don't recollect it, so I don't know exactly how it was
04:17:35 6 prepared.

04:17:36 7 Q. Is that a fair characterization of the document, that Store
04:17:41 8 4606 is listed as a new store entering the CSDP in the second
04:17:44 9 quarter of 2013?

04:17:46 10 A. I would say that's fair.

04:17:48 11 Q. And if you could pull out MR925, please.

04:17:57 12 On the first page of this document, which we'll mark
04:18:00 13 as Exhibit 11, this is a loss prevention store report review
04:18:05 14 for Store 4606 dated July 12th, 2013.

04:18:10 15 Do you see that?

04:18:12 16 A. I do.

04:18:13 17 Q. Okay. And this is that same store in Warren, Ohio?

04:18:19 18 A. Yes.

04:18:19 19 Q. Is this a report of the audit that would be conducted under
04:18:22 20 the controlled substance dispensing program by loss prevention?

04:18:27 21 A. Yes.

04:18:28 22 Q. And so this is an example of the type of audit report that
04:18:31 23 would be conducted as a component of the controlled substance
04:18:36 24 dispensing program; is that right?

04:18:39 25 A. Yes, at the time.

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04:18:40 1 Q. Okay. I'm going to ask you to turn through the document
04:18:47 2 till about the third page in the physical document where it
04:18:50 3 lists prescribers across the top. And the question, in 15, is,
04:18:55 4 "Do you have any concerns with any prescribers for your
04:18:58 5 patients? Who and why?"

04:19:00 6 And the pharmacists list Dr. Veres. This is the
04:19:06 7 pharmacist in charge, the PIC; correct?

04:19:10 8 A. Correct.

04:19:12 9 Q. "High unit amounts for hydrocodone scripts and Dr. Torres.
04:19:18 10 Both offices write scripts for pain meds, hydrocodone, ranging
04:19:22 11 from 90 to 160 tablets."

04:19:24 12 Did I read that correctly?

04:19:26 13 A. Yes.

04:19:28 14 Q. And the RPH1, who is that?

04:19:32 15 A. That would have been another pharmacist on duty at the
04:19:36 16 time.

04:19:36 17 Q. And that pharmacist made the same conclusions, that they
04:19:40 18 were concerned about the prescribers, Dr. Veres and Dr. Torres;
04:19:44 19 correct?

04:19:46 20 A. Those are the doctors that they listed, yes.

04:19:49 21 Q. Okay. And so --

04:19:54 22 MR. WEINBERGER: Is there some way we can expand the
04:19:56 23 screen because these documents are --

04:20:04 24 (Off-record discussion).

04:20:05 25 THE COURT: All right. We're trying to make the

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04:20:07 1 adjustment.

04:20:18 2 MR. WEINBERGER: Is it possible to pause for a minute
04:20:21 3 to see if we can get somebody from IT to --

04:20:25 4 COURTROOM DEPUTY: There's something they need to do
04:20:26 5 downstairs on 15. I just talked to them and they're downstairs
04:20:31 6 now, so I guess if we can pause for a couple minutes. . .

04:20:41 7 THE COURT: Well, we can wait a couple minutes, but if
04:20:45 8 we can't, we'll just continue and do the best we can.

04:20:48 9 MR. LANIER: Your Honor -- Your Honor -- I feel like
04:20:54 10 an adolescent boy with my voice cracking.

04:20:57 11 Your Honor, might this be an opportunity, really brief
04:21:00 12 two minutes for me to just run down the hall and use the
04:21:02 13 restroom?

04:21:03 14 THE COURT: Yep. That's fine. We'll take a short
04:21:05 15 break.

04:21:15 16 We can take a short break and hopefully they'll get
04:21:18 17 this fixed.

04:21:34 18 (Recess was taken from 4:21 p.m. till 4:28 p.m.)

04:28:32 19 MR. WEINBERGER: Thank you, Judge. That's much
04:28:33 20 better.

04:28:34 21 THE COURT: Yeah. This seems better.

04:28:34 22 MR. WEINBERGER: Thank you, Judge.

04:28:35 23 THE COURT: Glad we got it fixed.

04:29:12 24 Okay. We can continue.

04:29:17 25 BY MR. ELSNER:

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04:29:18 1 Q. If you turn to question 16, which is just under this, "Does
04:29:25 2 the store have a do not fill list? Who is on it?"

04:29:29 3 What is a do not fill list?

04:29:36 4 A. That's a characterization of a list that may have been at
04:29:44 5 store level for doctors that pharmacists may not fill for.

04:29:54 6 Q. Okay. So individual stores at this time could create their
04:29:57 7 own lists of prescribers that they would not fill prescriptions
04:30:01 8 for; is that correct?

04:30:06 9 A. The do not fill lists were not necessarily encouraged or
04:30:10 10 directed from corporate at all. Corporate -- or I should say
04:30:16 11 our group, not corporate -- but we advised pharmacists to
04:30:23 12 exercise corresponding responsibility with every prescription
04:30:26 13 that they receive, and if there are concerns, to resolve those
04:30:30 14 concerns.

04:30:32 15 Q. On each individual prescription; correct?

04:30:36 16 A. Correct.

04:30:37 17 Q. And your department did not believe that blanket refusals
04:30:40 18 to fill lists at individual pharmacy were appropriate; right?

04:30:44 19 A. I think so it's fair to say that we -- our group did not
04:30:50 20 want blanket policies in -- you know, at any one particular
04:31:01 21 pharmacy because that would allow pharmacies or anything to be
04:31:06 22 more stringent than, you know, what was CVS policy.

04:31:13 23 Q. So even if the pharmacists in that particular store had
04:31:16 24 determined that a particular pharmacist was operating a pill
04:31:20 25 mill, they couldn't, in your department's view, have a do not

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04:31:25 1 fill list for those prescribers. They needed to evaluate each
04:31:30 2 individual prescription?

04:31:31 3 A. If a pharmacist had knowledge that a prescriber was a pill
04:31:36 4 mill, that would be a concern they wouldn't be able to resolve,
04:31:41 5 so we would expect them to not fill that prescription.

04:31:45 6 Q. But you would not permit them to have a do not fill list
04:31:52 7 with that prescriber's name in it; correct?

04:31:56 8 A. We -- I think it's fair to say that the guidance was is
04:31:59 9 that you should not have a do not fill list, but if you were
04:32:05 10 uncomfortable with a prescription, that -- and you couldn't
04:32:07 11 resolve those concerns, that you couldn't fill.

04:32:12 12 Q. And if we look at Question 22 related to cocktails, once
04:32:22 13 again, Dr. Torres and Dr. Veres were mentioned here as
04:32:30 14 prescribing cocktail drugs of concern to the pharmacists at
04:32:34 15 this store in Warren, Ohio; correct?

04:32:37 16 A. It is characterized that Dr. Torres and Veres are listed to
04:32:42 17 the question about routinely prescribing cocktail.

04:32:48 18 Q. I want to ask you to turn to question 34. "Do a high
04:33:11 19 percentage of patients receiving hydrocodone fill their scripts
04:33:14 20 early?"

04:33:17 21 And the answer was: "15 to 20 percent attempt, but the
04:33:22 22 pharmacy will have a two-day policy on early refills."

04:33:27 23 So this indicates that almost one out of every four
04:33:32 24 hydrocodone prescription, a patient is attempting to fill it
04:33:36 25 before the refill date; correct?

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04:33:40 1 A. What is written here, one pharmacist said 1 in 5, and the
04:33:48 2 other one said 10 to 15 percent.

04:33:50 3 Q. And does that concern you from a compliance perspective,
04:33:54 4 that, you know, 15 percent or 20 percent of the patients with
04:34:02 5 hydrocodone prescriptions were trying to refill their
04:34:04 6 prescriptions early?

04:34:06 7 A. It is something that we would expect the pharmacist to do
04:34:10 8 due diligence on and, you know, resolve any concerns that they
04:34:15 9 may have.

04:34:15 10 Q. Well, I'm asking you, in your position, if this is
04:34:24 11 indication to you that there is potential abuse and diversion
04:34:31 12 occurring for Store 4606, when 97 percent -- where this store
04:34:38 13 is in the 97th percentile for volume for hydrocodone, 99th
04:34:43 14 percentile for share of hydrocodone, and you have patients 15
04:34:49 15 to 20 percent of the time with hydrocodone prescriptions trying
04:34:52 16 to refill those early. Is that indication to you, in your
04:34:58 17 department, that diversion is occurring?

04:35:02 18 A. Again, it's hard to characterize one question from an
04:35:05 19 entire visit. If it was a concern, it would have been
04:35:13 20 addressed.

04:35:14 21 Q. My question is, does it concern you in your position as the
04:35:17 22 head of this program?

04:35:19 23 I mean, you're looking for stores that are outliers.
04:35:22 24 You've identified a store that's an outlier. And then within
04:35:26 25 that store, the patients who are prescribed these pills, one in

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04:35:29 1 five of them is trying to get the prescription filled early.

04:35:32 2 Is that an indication to you of potential diversion?

04:35:37 3 I mean, a red flag of diversion is trying to get a prescription

04:35:40 4 filled early; correct?

04:35:41 5 A. I would say it's, you know, a potential red flag that would
04:35:46 6 need to be resolved.

04:35:50 7 Q. And the reason it's a red flag is that someone coming to
04:35:54 8 the pharmacy to refill a prescription before their day's supply
04:35:58 9 has run out is indication that that person might be abused to
04:36:03 10 the medication, they might be addicted to the medication,
04:36:06 11 and/or they might be diverting the medication; correct?

04:36:09 12 That's -- that is the red flag.

04:36:11 13 A. It really depends on the facts and circumstances. Someone
04:36:14 14 may need their prescription early for legitimate reasons.

04:36:21 15 Q. And I appreciate that. There might be some small
04:36:23 16 percentages of times where, hey, I'm going on a trip and my
04:36:26 17 script's going to come in the day after I leave, but we're
04:36:29 18 talking about 10 to 20 percent of the prescriptions, not 1 or
04:36:35 19 2 percent of the prescriptions; right?

04:36:36 20 A. That is what is characterized here.

04:36:38 21 Q. Ms. Travassos, I want you to pull out MR924, if you would.
04:36:45 22 And we'll mark this as Exhibit 12.

04:36:47 23 So this is the loss prevention store review report
04:36:51 24 dated February 14th, 2014, related to the second time that
04:36:58 25 Store 4606 in Warren, Ohio, was in the controlled substance

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04:37:04 1 dispensing program.

04:37:05 2 Do you see that?

04:37:06 3 A. I do.

04:37:07 4 Q. So this particular store went through the controlled
04:37:12 5 substance dispensing program in 2013, an audit was conducted,
04:37:17 6 the pharmacists were trained, they signed their corresponding
04:37:23 7 responsibility authorizations or attestations, and now they're
04:37:28 8 in the program again for a second time; correct?

04:37:31 9 A. Correct. Correct.

04:37:33 10 Q. Okay. And CVS sent the same regional loss prevention
04:37:38 11 manager to conduct this investigation in 2014, this audit; is
04:37:45 12 that right?

04:37:45 13 A. Yes.

04:37:46 14 Q. Okay. And the questions are going to be largely the same.
04:37:51 15 We're going to look at some of those.

04:37:57 16 I want to turn first to -- in the pharmacy background
04:38:03 17 section, which is either the second or third page of the
04:38:06 18 document.

04:38:12 19 And the third question there is, "Has there been any
04:38:16 20 recent changes to the area, other pharmacies opened or closed?"

04:38:21 21 And the answer here is that "Walgreens has imposed
04:38:25 22 limits on hydrocodone/oxycodone. They can't order once they
04:38:28 23 are at a specific threshold, causing patients to come." I
04:38:34 24 assume to CVS.

04:38:35 25 And then the -- the second pharmacist reaches the same

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04:38:42 1 conclusion.

04:38:42 2 Do you see that?

04:38:45 3 A. I see that.

04:38:47 4 Q. Would you agree with me that if Walgreens was exceeding its
04:38:52 5 threshold limits in this town, and if your store, CVS Store
04:38:59 6 4606, was in the 97th percentile for volume and 99th percentile
04:39:03 7 for share, that this may be an indication that there is
04:39:10 8 diversion occurring within this community?

04:39:13 9 A. No, I can't say that because Walgreens has changed policies
04:39:18 10 over time, not necessarily specific to this area.

04:39:26 11 Q. Understood. But Walgreens has exceeded, apparently,
04:39:33 12 according to your pharmacists at 4606, exceeded its limits on
04:39:37 13 hydrocodone and oxycodone, and that's the reason that more
04:39:40 14 patient are coming to the CVS store.

04:39:42 15 Do you see that?

04:39:43 16 A. I see what's written, but I'm not sure what that
04:39:47 17 characterization relates to.

04:39:51 18 Q. And so if Walgreens had reached its limits in terms of its
04:39:57 19 dispensing of hydrocodone and oxycodone, and -- in this
04:40:03 20 community, and CVS 4606 was in the top 97th percentile for
04:40:09 21 volume and 99 percentile for share of hydrocodone, does it
04:40:15 22 concern you that there may be an oversupply of opioids into
04:40:19 23 this community?

04:40:20 24 A. Again, I wasn't there, but the way I read this is that
04:40:24 25 Walgreens made a change to what they were allowing their

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04:40:29 1 pharmacists to dispense.

04:40:35 2 Q. And as a result, they placed a limit so that there would
04:40:39 3 not be more than the limit of opioids dispensed from their
04:40:44 4 stores in that community; right?

04:40:47 5 A. I can't say to what the change was, but, you know, I wasn't
04:40:51 6 there. I don't know the characterization.

04:40:54 7 Q. Does it concern you, in the pharmacy professional practice
04:40:59 8 department, that you've got Walgreens and CVS, two of the
04:41:05 9 largest pharmacies in the country, both of which are reaching
04:41:09 10 the upper limits of their dispensing of opioids into that
04:41:15 11 community, that there may be an oversupply into that community?

04:41:21 12 A. Again, I wasn't the one conducting the visit, so I can't
04:41:24 13 say what the discussion was behind these comments to understand
04:41:28 14 what they imply.

04:41:32 15 Q. Well, but I'm asking you, having reviewed this from
04:41:37 16 corporate headquarters, is that a concern to you that that may
04:41:42 17 be occurring, which is, frankly -- isn't that the purpose of
04:41:46 18 the controlled substance dispensing program in part, is to make
04:41:49 19 sure that pills aren't being diverted into these communities?

04:41:57 20 A. The purpose of the program is to review the practices at
04:42:00 21 the store to ensure -- to make sure that pharmacists have the
04:42:06 22 tools and the knowledge to exercise corresponding
04:42:10 23 responsibility appropriately.

04:42:12 24 Q. Ms. Travassos, is the purpose of the corresponding
04:42:16 25 responsibility and the corporate guidance that CVS gave to its

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04:42:22 1 pharmacists to help assist in preventing diversion of
04:42:28 2 controlled substances?

04:42:30 3 A. I can tell you that CVS provides training on diversion, but
04:42:40 4 the goal of this program is to identify stores with outlying
04:42:48 5 characteristics of dispensing that -- to ensure correct store
04:42:56 6 processes were in place and pharmacists had the knowledge to
04:43:00 7 appropriately exercise corresponding responsibility.

04:43:05 8 Q. And the training that was given to those pharmacists was
04:43:09 9 training in red flags of indicators of potential diversion;
04:43:14 10 correct?

04:43:17 11 A. Training does provide information on potential red flags.

04:43:22 12 Q. Red flags which were indicators of potential diversion;
04:43:25 13 correct?

04:43:27 14 A. Potential red flags that could be of concern, depending on
04:43:34 15 the circumstance and the facts.

04:43:37 16 Q. The audit report under drugs, hydrocodone, if you move
04:43:44 17 forward a couple more pages, two pages, again highlights the
04:43:58 18 prescribing practices of Dr. Veres and Dr. Torres.

04:44:05 19 Do you see that?

04:44:06 20 A. I see them mentioned on the page, yes.

04:44:09 21 Q. And they're mentioned as prescribers who prescribe the
04:44:13 22 majority of the hydrocodone scripts, in the second column
04:44:19 23 there?

04:44:25 24 A. Yes, I see them mentioned.

04:44:27 25 Q. Okay. And they're also mentioned as prescribers who

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04:44:34 1 routinely prescribe hydrocodone, again, with other drugs, like
04:44:39 2 muscle relaxers; correct?

04:44:40 3 A. I see that documented here.

04:44:43 4 Q. In fact, the RPH1 pharmacist, in response to the question,
04:44:51 5 "What doctors do you verify scripts with because you're
04:44:54 6 concerned with clientele or total quality" -- sorry, "or total
04:45:01 7 quantity of hydrocodone scripts?" responded, "Torres and
04:45:07 8 Veres"; correct?

04:45:11 9 In the second column, Jon.

04:45:14 10 A. That is correct.

04:45:20 11 Q. And if we turn forward to -- under Pharmacist, which is a
04:45:33 12 few pages over, in the third from the bottom, "Does the
04:45:44 13 pharmacist refuse to fill the prescription after the
04:45:46 14 verification process if he or she is uncomfortable with a
04:45:53 15 prescriber's response? "

04:45:56 16 And in the first column it says they refused three on
04:45:59 17 the day of this investigation, "and will not script for
04:46:03 18 oxycodone 30 milligrams or over. They will not carry it."

04:46:06 19 Do you see that?

04:46:09 20 A. I see that written here, yes.

04:46:12 21 Q. Okay. And in the next column it says, "Refuse one to two
04:46:17 22 each day due to early refills or the need to verify through the
04:46:19 23 doctor and then refuse."

04:46:20 24 Do you see that?

04:46:22 25 A. I do.

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04:46:23 1 Q. So according to these pharmacists in the second audit of
04:46:27 2 this particular store, nearly a year later after it first
04:46:31 3 entered the program, they were still refusing to fill around --
04:46:36 4 between one and three prescriptions a day; correct?

04:46:44 5 A. That is what's documented here. I wasn't there to have the
04:46:49 6 conversation, but that -- that is what is documented.

04:46:51 7 Q. And, in fact, the situation was so acute that the
04:46:57 8 pharmacist in charge decided that they will not carry oxycodone
04:47:02 9 over 30 milligrams.

04:47:03 10 Do you see that?

04:47:04 11 A. I see that written here, but, again, I wasn't there,
04:47:08 12 so. . .

04:47:10 13 Q. Well, you keep saying that you weren't there, but this is
04:47:12 14 what was reported to you as part of the program; correct?

04:47:18 15 A. This is what was reported, but I don't recall this specific
04:47:22 16 document.

04:47:24 17 Q. Does it concern you, as the head of this program, that the
04:47:29 18 store that you're investigating had decided on its own that it
04:47:34 19 would refuse to carry prescriptions over 30 milligrams for
04:47:38 20 oxycodone?

04:47:39 21 A. The fact that they're refusing to fill prescriptions shows
04:47:45 22 that they seem to be exercising corresponding responsibility.

04:47:48 23 Q. Do pharmacists have the ability at CVS to decide that
04:47:52 24 they're going to refuse to carry prescription over a certain
04:47:57 25 dosage amount?

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04:47:58 1 A. Currently, no.

04:48:00 2 Q. So I want to have you next turn two pages over to
04:48:11 3 prescribers.

04:48:16 4 And now the answer to the question that was asked in
04:48:18 5 2013, this -- the answer is now changed. "Does the store have
04:48:23 6 a do not fill list? And who is on it?"

04:48:26 7 And the answer now, as opposed to in 2013, is, yes,
04:48:30 8 and it lists these four prescribers.

04:48:33 9 Do you see that?

04:48:35 10 A. Yes.

04:48:36 11 Q. And so do different CVS stores have different do not fill
04:48:41 12 lists in 2013?

04:48:50 13 A. I can't say definitively, you know, what their prevalence
04:48:57 14 was, if it existed.

04:49:00 15 Q. Well, did -- was there a process for CVS pharmacists to
04:49:04 16 inform corporate headquarters that they had created a do not
04:49:08 17 fill list for certain prescribers?

04:49:15 18 A. I'm not aware. The only method I'm aware of is to inform
04:49:23 19 the prescriber monitoring team.

04:49:27 20 Q. And an individual pharmacist could not institute a national
04:49:31 21 decision to block prescribers; correct?

04:49:35 22 A. No, an individual -- well, pharmacists could raise
04:49:43 23 prescriber name to the prescriber monitoring team, and they can
04:49:48 24 refuse to fill from a prescriber if they're not comfortable.

04:49:52 25 Q. CVS pharmacists did not have the discretion to block

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04:49:58 1 prescribers on a national basis; correct?

04:50:01 2 A. They could escalate the prescribers to the prescriber
04:50:04 3 monitoring team and refuse to fill if they were uncomfortable.

04:50:09 4 Q. But they could not block on a national basis a prescriber;
04:50:14 5 correct?

04:50:15 6 A. They could escalate them to the prescriber outreach team.

04:50:18 7 Q. Ms. Travassos, do they have the authority to block them on
04:50:21 8 a national basis; yes or no?

04:50:24 9 A. They could only escalate them to a prescriber outreach
04:50:28 10 program.

04:50:28 11 Q. Okay. And only the CVS governance committee could block a
04:50:32 12 prescriber on a national basis; correct?

04:50:34 13 A. Correct.

04:50:35 14 Q. In fact, CVS developed a policy that prohibited stores from
04:50:41 15 creating blanket refusals to fill lists; correct?

04:50:45 16 A. It wasn't specific to that. It was to any blanket policy.

04:50:51 17 Q. So why don't we turn to MR946, which we'll mark as
04:50:57 18 Exhibit 16.

04:50:59 19 And this is an e-mail from you to Hilary Dudley,
04:51:05 20 cc'ing Nicole Harrington on June 8th, 2016.

04:51:10 21 Do you see that?

04:51:12 22 A. Yes.

04:51:12 23 Q. And then if we turn to the memo which is attached, the
04:51:18 24 subject line reads, "Store-level blanket policies concerning
04:51:22 25 controlled substances."

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04:51:22 1 Do you see that?

04:51:25 2 A. Yes.

04:51:27 3 Q. And then in the paragraph which is underlined in part, it
04:51:31 4 reads, "Stores must only follow company-approved policies.

04:51:39 5 Stores are not authorized to adopt their own store-specific
04:51:44 6 policies without the joint review and approval of their
04:51:46 7 pharmacy supervisor, CVS legal department, and pharmacy
04:51:51 8 professional services department."

04:51:52 9 Did I read that correctly?

04:51:54 10 A. Yes.

04:51:56 11 Q. Then it reads that "stores were directed to immediately
04:52:01 12 discontinue any store-implemented blanket policy pertaining to
04:52:06 13 controlled substances."

04:52:07 14 Correct?

04:52:08 15 A. Correct.

04:52:09 16 Q. And, so, even if a -- and we can -- and we sort of asked
04:52:16 17 this before. But even if a pharmacy knows that a prescriber in
04:52:18 18 their area is operating a pill mill, they must review that
04:52:21 19 prescription to see if it individually, standing alone, could
04:52:24 20 be filled correctly; right?

04:52:26 21 A. Again, if the pharmacist has knowledge that the prescriber
04:52:29 22 is a pill mill, that would be something they couldn't resolve,
04:52:33 23 so they would refuse to fill.

04:52:35 24 Q. But they couldn't have a blanket list in the store to
04:52:39 25 indicate to all the other pharmacists in the store that this

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04:52:44 1 particular prescriber should not -- we should not be filling
04:52:47 2 their prescriptions because they're a pill mill?

04:52:51 3 A. Whether they did or they didn't, I cannot say, I can say
04:52:56 4 that if pharmacists had that knowledge, then they would refuse
04:53:00 5 to fill.

04:53:00 6 Q. Do you know how many CVS stores had these blanket refusals
04:53:05 7 to fill lists?

04:53:09 8 A. No.

04:53:11 9 Q. We looked at one from the audit for the CVS store in
04:53:15 10 Warren, Ohio. Were there other CVS stores in Ohio that had
04:53:19 11 these blanket refusals to fill lists?

04:53:25 12 A. I do not know.

04:53:28 13 Q. Can we turn to -- pull out Exhibit MR947. This will be
04:53:32 14 Exhibit 17.

04:53:35 15 This is an e-mail from a particular CVS store. This
04:53:43 16 is RX07686, and this is a store in Mentor, Ohio. And this is
04:53:53 17 an e-mail to Amy Winchell, and the subject line reads "Pain
04:53:57 18 management doctor."

04:53:58 19 Do you see that?

04:54:01 20 A. Yes.

04:54:03 21 Q. Okay. And the -- and the e-mail reads that "Currently
04:54:18 22 Stores 4351 and 4327 are not filling for him. And I believe
04:54:27 23 that Willoughby Hills has stopped as well. His office exhibits
04:54:31 24 many red flags of a pill mill, such as high quantity, same dose
04:54:34 25 and directions for numerous patients, accepting cash-only

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04:54:37 1 payments."

04:54:39 2 But there -- and she says that "I verified that CVS
04:54:43 3 corporate is currently investigating this practice."

04:54:46 4 There's no -- there's no guidance to the pharmacy
04:54:51 5 about filling prescriptions for this particular doctor, other
04:54:57 6 than CVS corporate has been informed; correct?

04:55:01 7 A. I haven't seen this before. I'm not familiar with it to
04:55:04 8 know, other than what's here, what's said.

04:55:07 9 Q. Was it common practice before CVS instituted this blanket
04:55:11 10 refusal -- you know, this prohibition on blanket refusals to
04:55:15 11 fill for pharmacy to create their own practices to prevent
04:55:22 12 prescriptions being filled for certain prescribers that they
04:55:25 13 believed were operating a pill mill?

04:55:29 14 A. The blanket policy communication, if you will, was not
04:55:34 15 directed at do not fill lists. It was all policies that were
04:55:44 16 at the store level that were more stringent than corporate
04:55:49 17 policy. It wasn't specific to do not fill lists.

04:55:53 18 Q. This particular e-mail to the store in Mentor, if we go to
04:56:03 19 the e-mail that just precedes this one, underneath, this is an
04:56:11 20 e-mail from Amy Winchell to -- I'm sorry, from this particular
04:56:17 21 store in Mentor to Amy Winchell, and it's in reference to
04:56:24 22 Dr. David Demangone.

04:56:26 23 Do you see that?

04:56:28 24 A. Yes.

04:56:29 25 Q. And so the pharmacist had heard that pain management doctor

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04:56:33 1 in our area, that other stores in the area were refusing to
04:56:41 2 fill for him. And that's what prompted this -- this e-mail and
04:56:44 3 the response that this store in Mentor received that there were
04:56:51 4 other CVS stores that were not filling for this doctor as well.

04:56:52 5 Do you see that?

04:56:55 6 A. It doesn't say other CVS stores. It just says other
04:57:01 7 stores, but yes.

04:57:02 8 Q. Her reply says that "Currently, CVS Stores 4351 and 4327
04:57:08 9 are not filling for him. I believe Willoughby Hills has
04:57:12 10 stopped as well."

04:57:12 11 Do you see that?

04:57:13 12 A. I do.

04:57:15 13 Q. Is there a dedicated place at CVS to send complaints of
04:57:20 14 this type, or requests for investigation of this type?

04:57:29 15 A. Yes.

04:57:30 16 Q. What did the policies and procedures say as to what a CVS
04:57:35 17 employee should do with this information?

04:57:43 18 A. They -- that it would probably be escalated to the
04:57:47 19 prescriber monitoring team, but I can't say definitively where
04:57:51 20 she sent it.

04:57:52 21 Q. So was there a policy and procedure at this time in 2014 of
04:57:57 22 where this information was to be sent, to whom to send it?

04:58:10 23 A. I don't know if it was written in policy, but I'm sure it
04:58:13 24 was communicated.

04:58:15 25 Q. Communicated how? And what -- and how was it communicated?

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04:58:21 1 A. I can't say.

04:58:22 2 Q. And who specifically was she supposed to send this
04:58:25 3 information to?

04:58:27 4 A. If there was a concern with a prescriber, it should be sent
04:58:30 5 to the prescriber monitoring team.

04:58:36 6 Q. If you see the response that Ms. Winchell gave to the CVS
04:58:42 7 store in Mentor, if we go down a little bit, Jon, she writes,
04:58:54 8 "These are all things that should be taken into consideration
04:58:57 9 before filling. Can we verify legitimate purpose? Filling
04:59:01 10 these scripts are completely up to you in your professional
04:59:04 11 judgment."

04:59:06 12 Did I read that correctly?

04:59:09 13 A. Yes.

04:59:10 14 Q. So when a particular store reached out to CVS supervisor
04:59:18 15 with the concerns about a particular pill mill doctor, the
04:59:22 16 response was just to use your best judgment; correct?

04:59:26 17 A. It wasn't definitively known as a pill mill doctor. I --
04:59:33 18 I'm not familiar with him or the situation, but she doesn't
04:59:36 19 characterize him as such. She says he has associated red
04:59:42 20 flags, and pharmacists need to review prescriptions and to, you
04:59:47 21 know, take the information that they have, and if there is any
04:59:51 22 concerns, they need to, you know, satisfy those concerns prior
04:59:56 23 to dispensing.

04:59:59 24 Q. Well, she actually writes that "his office exhibits many
05:00:02 25 red flags of a pill mill"; correct?

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05:00:12 1 A. That's what she wrote, but, again, I don't know the
05:00:14 2 characterization because I'm not familiar with this prescriber.

05:00:17 3 Q. So the date of this -- of this document is December 1st,
05:00:23 4 2014. If you could pull out MR948 for me, please. This is
05:00:29 5 Exhibit 18.

05:00:30 6 Ms. Travassos, this is -- Exhibit 18 is interview
05:00:34 7 notes under the prescriber monitoring program related to David
05:00:40 8 Demangone.

05:00:41 9 Do you see that?

05:00:42 10 A. I do.

05:00:42 11 Q. Okay. And this was April 17th, 2015.

05:00:45 12 Do you see the date?

05:00:48 13 A. Yes.

05:00:50 14 Q. This was over four months after the -- Amy Winchell had
05:00:57 15 raised David Demangone to CVS corporate headquarters to ensure
05:01:02 16 that he was being investigated; correct?

05:01:14 17 A. That's when this was drafted, I guess. Yes, that's when
05:01:17 18 the interview was, yep.

05:01:18 19 Q. And the interview notes indicate that Dr. Demangone was
05:01:32 20 seeing -- one second.

05:01:33 21 Under the estimated number of patients the
05:01:38 22 practitioner sees daily, do you see that?

05:01:40 23 This practitioner was seeing between 65 to 70 patients
05:01:46 24 a day?

05:01:47 25 Do you see that?

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05:01:50 1 A. I do see that written.

05:01:52 2 Q. Would that be an indicator to you of a doctor who's
05:01:58 3 potentially engaged as a pill mill?

05:01:59 4 A. I don't know. As not being part of the team, I don't know
05:02:03 5 what usual is.

05:02:06 6 Q. Does it seem high to you?

05:02:08 7 A. Honestly, I can't say without, you know, being part of the
05:02:13 8 team that reviews this on a daily basis.

05:02:19 9 Q. And under Protocols it says, "What is the highest quantity
05:02:22 10 of tablets that you write for oxycodone 30-milligram
05:02:26 11 prescriptions?"

05:02:27 12 And the answer is, "5/325, 553/1050, very high pill
05:02:36 13 volumes."

05:02:36 14 Do you see that?

05:02:39 15 A. I don't know what that's referring to because it would seem
05:02:42 16 to me 5/325 is the strength of oxycodone, so I don't know if
05:02:48 17 that's referring to oxy 30 specifically.

05:02:52 18 Q. But what's written there is very high pill volumes as well;
05:02:57 19 correct?

05:02:59 20 A. That's written there, but I don't know what he's referring
05:03:02 21 to.

05:03:04 22 Q. And the ultimate conclusion was to -- oh, and under the
05:03:08 23 notes on the second page, it says, "Dr. Demangone was obviously
05:03:13 24 disinterested in having this discussion."

05:03:14 25 Do you see that?

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05:03:17 1 A. I do.

05:03:19 2 Q. And the ultimate conclusion, though, was to keep him active
05:03:22 3 and continue to review; correct?

05:03:25 4 A. That's what's marked here.

05:03:27 5 Q. We were looking at the CVS store in Warren, Ohio, that had
05:03:31 6 been flagged on two separate occasions by the controlled
05:03:37 7 substance dispensing program that you ran.

05:03:38 8 It certainly wasn't the only store that was triggered
05:03:42 9 by the algorithm on multiple occasions; correct?

05:03:46 10 A. That's correct.

05:03:47 11 Q. Yes.

05:03:54 12 A. That's what it's saying, but it wasn't that uncommon for a
05:03:57 13 store to flag in a subsequent algorithm because of the amount
05:04:02 14 of time or -- that the algorithm looked back, if you will.

05:04:07 15 MR. WEINBERGER: Your Honor --

05:04:10 16 THE COURT: Hold on a second.

05:04:11 17 MR. WEINBERGER: This might be a good time to break if
05:04:14 18 that's okay.

05:04:14 19 THE COURT: All right. If this is a convenient time.

05:04:16 20 MR. WEINBERGER: Yes, Your Honor.

05:04:17 21 THE COURT: Okay. All right. Ladies and gentlemen,
05:04:23 22 we will break for the evening.

05:04:27 23 Usual admonitions apply. Again, do not encounter,
05:04:33 24 review, read, see, watch anything in any sort of media about
05:04:37 25 this case. Do not do any independent research or anything. Do

05:04:41 1 not discuss the case with anyone, and we'll pick up -- we'll
05:04:46 2 finish this deposition and then have some more plaintiffs'
05:04:49 3 witnesses tomorrow.

05:04:50 4 Have a good evening.

05:04:53 5 (Jury excused from courtroom at 5:04 p.m.)

05:05:24 6 THE COURT: All right. Please be seated for a minute.
05:05:28 7 I don't want to get too far behind in the exhibits, so
05:05:32 8 I guess someone handed me a revised plaintiffs' list for Tasha
05:05:39 9 Polster, so I guess now that -- as I recall, there was an
05:05:46 10 objection to her personnel file, which is 19927. I think first
05:05:53 11 we should only -- we shouldn't admit her whole personnel file.
05:05:59 12 There may have been one or two pages used. So what pages are
05:06:02 13 you offering?

05:06:05 14 MR. LANIER: Your Honor, we would -- we would only
05:06:11 15 offer -- we would only offer the pages we read into the record,
05:06:17 16 and I will commit to you that we can look through that tonight
05:06:21 17 and we'll offer those specific pages in the morning.

05:06:24 18 THE COURT: All right. With that modification, is
05:06:27 19 there any objection?

05:06:30 20 MS. SWIFT: Well, I'd like to -- Kate Swift for
05:06:31 21 Walgreens, Your Honor.

05:06:31 22 THE COURT: Okay.

05:06:33 23 MS. SWIFT: I'd like to take a look at what they --
05:06:35 24 what they propose to offer, and we have other objections too
05:06:37 25 that I've submitted to them in writing. We're happy to talk

05:06:40 1 about those with them before bringing anything to you if that's
05:06:43 2 helpful.

05:06:44 3 THE COURT: All right. Well, see if you -- see if you
05:06:46 4 can work these out and we'll address them in the morning.

05:06:55 5 Did anyone look -- there were two objections that
05:07:02 6 defendants' exhibits with Dr. Alexander. I can't remember
05:07:07 7 even -- all right.

05:07:09 8 MS. SWIFT: Yes, Your Honor.

05:07:09 9 THE COURT: Have you -- have you discussed with the
05:07:11 10 plaintiffs the specific statements that you think are directly
05:07:15 11 contradictory to what Dr. Alexander said in court?

05:07:22 12 MS. FIEBIG: We identified them for the plaintiffs.
05:07:24 13 Have you all had a chance to review?

05:07:25 14 MR. LANIER: The ones that you identified to us seemed
05:07:27 15 to be entirely consistent with what you said. I think you even
05:07:30 16 showed him those and he agreed that he had said that and I
05:07:33 17 didn't see how it was even remotely impeachment.

05:07:36 18 MS. FIEBIG: We do think it's inconsistent,
05:07:38 19 Your Honor. Dr. Alexander testified that overdispensing by
05:07:42 20 pharmacies was one of the fundamental pieces of driving the
05:07:45 21 opioid epidemic, and that was the first time he had offered
05:07:47 22 that testimony when he was in this court.

05:07:49 23 He's testified twice before to Congress, both times
05:07:52 24 about the causes and effects of the opioid epidemic and made no
05:07:56 25 mention of pharmacies or overdispensing. He spoke exclusively

05:08:01 1 about overprescribing, including the many, many, many causes of
05:08:05 2 overprescribing.

05:08:06 3 THE COURT: I think that's correct. What -- what
05:08:09 4 specifically -- hold it.

05:08:10 5 What specific statement are you offering?

05:08:12 6 MS. FIEBIG: So there were five pages from his
05:08:15 7 Congressional testimony that we'd like to offer.

05:08:17 8 THE COURT: We're not going to admit five pages.

05:08:19 9 There may be one statement that is where he says what the
05:08:25 10 causes are. If there's a specific statement that says here are
05:08:28 11 the causes and he doesn't mention pharmacies, I may consider
05:08:32 12 admitting that statement.

05:08:33 13 MS. FIEBIG: Sure.

05:08:34 14 THE COURT: But the rest of it's not inconsistent.

05:08:36 15 MS. FIEBIG: Okay. Well let us offer you a couple
05:08:38 16 then.

05:08:38 17 THE COURT: Well --

05:08:39 18 MS. FIEBIG: In Exhibit 01329, on Page 88, he blames
05:08:46 19 manufacturers, the DEA, and the FDA for the opioid epidemic and
05:08:52 20 makes no mention of pharmacies or overdispensing.

05:08:56 21 THE COURT: All right. Well, let me look at this.

05:08:58 22 Where --

05:09:05 23 MR. WEINBERGER: Your Honor, later on in --

05:09:07 24 THE COURT: I don't even find this. Hold on.

05:09:14 25 Well, this says multifaceted campaigns by

05:09:18 1 pharmaceutical companies. That could be a lot of things.

05:09:21 2 MR. WEINBERGER: Right.

05:09:21 3 THE COURT: I don't see anything inconsistent there.

05:09:23 4 MS. FIEBIG: But it doesn't have to be flatly
05:09:25 5 contradictory.

05:09:26 6 THE COURT: Yes, it does, before I touch it. All
05:09:28 7 right. So, so far I don't see anything that should come in.

05:09:32 8 Again, if you can -- all right. If you can show me
05:09:35 9 something very specifically that directly contradicts what he
05:09:40 10 says, I'll consider admitting it, but so far I haven't seen
05:09:44 11 anything, so. . . .

05:09:46 12 MS. FIEBIG: Understood. Thank you, Your Honor.

05:09:48 13 THE COURT: All right. So that takes care of
05:09:52 14 Dr. Alexander.

05:09:53 15 The parties are still working on Tasha Polster. Then
05:09:56 16 we have things with Vernazza, Nelson's new testimony, and
05:10:05 17 Travassos, so the parties can work with that.

05:10:07 18 What's all this?

05:10:14 19 Well, have you gone through these with the plaintiffs,
05:10:14 20 all these exhibits you want in?

05:10:17 21 MS. SWIFT: I've submitted them all twice actually to
05:10:18 22 the plaintiffs, Your Honor. I haven't -- other than what
05:10:22 23 Mr. Weinberger raised yesterday in court with you about the
05:10:24 24 additional good faith dispensing policies, I haven't received
05:10:28 25 any objections from plaintiffs.

05:10:37 1 THE COURT: Well, now they're like 50 or 60 good faith
05:10:42 2 dispensing and target policies. I --

05:10:46 3 MS. SWIFT: They're the same policies that I addressed
05:10:48 4 with her in her direct, Your Honor.

05:10:52 5 MR. WEINBERGER: Well, you pointed her to a box.

05:10:54 6 THE COURT: Yeah.

05:10:54 7 MR. WEINBERGER: You didn't -- you didn't identify on
05:10:57 8 the record what the exhibit numbers were in the box. She --
05:11:03 9 it's not like she went through the box and said these are
05:11:07 10 Exhibits X through Y that I've looked at. The foundation was
05:11:12 11 not laid for that, Your Honor.

05:11:13 12 THE COURT: Well --

05:11:14 13 MS. SWIFT: Your Honor, I --

05:11:15 14 THE COURT: There were some at the beginning and some
05:11:17 15 in the middle and some at the end. I think we should --

05:11:21 16 MS. SWIFT: There were two sets of exhibits. The box
05:11:24 17 that Mr. Weinberger refers to, I believe, was the box of
05:11:28 18 refusals to fill, which we have not offered. You already said
05:11:30 19 that those could not come in through her.

05:11:32 20 The policies were not in a box, and I did go through
05:11:36 21 them with her and I asked her to please look through and
05:11:39 22 confirm that everything in that Redweld was additional good
05:11:43 23 faith dispensing policies and she looked through them carefully
05:11:46 24 and said that they were.

05:11:47 25 MR. WEINBERGER: No, she didn't.

05:11:48 1 THE COURT: Hold it.

05:11:49 2 MR. WEINBERGER: Your Honor --

05:11:49 3 THE COURT: These are over what period of time?

05:11:51 4 MS. SWIFT: They are between 1998 and 2020,

05:11:54 5 Your Honor.

05:11:55 6 MR. WEINBERGER: There's 70 documents in that Redweld,

05:11:57 7 Your Honor, and -- and, look, we're prepared to be -- to

05:12:03 8 withdraw the objection to those, but, again, at every --

05:12:07 9 THE COURT: Yeah, I think you're going to have to

05:12:10 10 reciprocate. Defendants are going to have to reciprocate.

05:12:13 11 MS. SWIFT: All right. We'll continue to talk to the

05:12:15 12 plaintiffs about it.

05:12:16 13 THE COURT: I'm going to keep the same strike zone.

05:12:18 14 So you're going to have to reciprocate probably with some of

05:12:21 15 the ARCos data and some other things and they'll reciprocate.

05:12:24 16 But, otherwise, if we've got to be strict you're not getting

05:12:28 17 these 70 in.

05:12:29 18 MS. SWIFT: Understood. We'll keep talking to them

05:12:32 19 about it. Thank you, Your Honor.

05:12:32 20 THE COURT: All right. So -- and then hopefully there

05:12:36 21 won't be too much disagreement on the ones with the

05:12:39 22 depositions.

05:12:39 23 Okay. Mr. Lanier, Mr. Weinberger, who are -- after we

05:12:45 24 finish this deposition, which we're mostly through, who do you

05:12:50 25 envision for tomorrow?

05:12:51 1 MR. LANIER: Your Honor, our anticipation tomorrow is
05:12:53 2 to finish with Dr. Keys.

05:12:55 3 THE COURT: Oh, right, right, Dr. Keyes from New York.

05:12:58 4 MR. LANIER: Right. And then we'll be putting on our
05:13:00 5 plaintiffs, and we've got two plaintiffs' witnesses we'll be
05:13:08 6 putting on, and then --

05:13:09 7 THE COURT: And those are --

05:13:11 8 MR. LANIER: Kim Fraser.

05:13:12 9 THE COURT: Right, Ms. Fraser.

05:13:13 10 MR. LANIER: And April Caraway.

05:13:15 11 THE COURT: Right.

05:13:19 12 MR. LANIER: And then, Your Honor, at that point in
05:13:21 13 time, the only witness we have left is Mr. Chunderlik, and he's
05:13:28 14 not available until video on Wednesday morning. So we can rest
05:13:31 15 pursuant to putting him on Wednesday morning, or we can put him
05:13:36 16 on Wednesday and then rest after that, whatever the Court's
05:13:41 17 preference is, but I anticipate us being through with our
05:13:42 18 witnesses probably by about 2:00 or 3:00 tomorrow afternoon.

05:13:46 19 THE COURT: All right. Well, I -- my preference is to
05:13:49 20 keep going and not have a gap, so we'll -- defendants should
05:13:53 21 have their witness -- a witness ready to go when we're done
05:13:56 22 with Caraway, and then we'll have Chunderlik Wednesday morning
05:14:02 23 because that's when that one witness was available.

05:14:07 24 And again, we have -- doesn't really matter who's
05:14:10 25 calling the witnesses, the jury's paying attention to all of

05:14:13 1 them, so the defendant should have a -- one witness available,
05:14:17 2 either live, or if you have a deposition that's easier maybe
05:14:21 3 because we're -- it's a little loose so we don't have someone
05:14:25 4 tied up, you may want to start with a deposition that's --
05:14:27 5 that's fine.

05:14:29 6 MR. LANIER: If -- if --

05:14:30 7 THE COURT: Or two if they're short. I don't know
05:14:32 8 what length these are.

05:14:33 9 MR. LANIER: If we could find out who it is, that
05:14:35 10 would be very helpful to us.

05:14:37 11 THE COURT: Well, defendants want to confer and let
05:14:39 12 plaintiffs know, that's fine.

05:14:42 13 MR. MAJORAS: Your Honor, John Majoras. We were just
05:14:44 14 processing this information as we're hearing it. We'll be
05:14:46 15 happy to --

05:14:47 16 THE COURT: Okay. Okay. Just let them know,
05:14:50 17 Mr. Majoras, who you're going to start off with.

05:14:52 18 MR. MAJORAS: Your Honor, while I'm speaking, I just
05:14:54 19 wanted to note for the record, there -- in Mr. Lanier's
05:14:57 20 questioning of Mr. Nelson, there was some discussion about
05:15:00 21 recently produced documents. There was also some colloquy
05:15:02 22 among counsel in our off-the-record -- I mean, in our sidebar
05:15:05 23 conversation, I just want to note for the record of the 18
05:15:08 24 documents that they used with Mr. Nelson, 12 of them were
05:15:12 25 produced prior to Mr. Nelson's deposition, which was March 23rd

05:15:16 1 of this year, and if you need me to hand something up, I can do
05:15:21 2 that, Your Honor, but I just want to make that record.

05:15:22 3 MR. LANIER: I would love to see that Your Honor
05:15:23 4 because the representation to me from my team was that almost
05:15:27 5 all of those were recently produced documents and so I would
05:15:33 6 like to see that, and I will address it.

05:15:34 7 THE COURT: Well, I think you should discuss that with
05:15:36 8 Mr. Majoras because certainly that was the whole point of my
05:15:39 9 ordering --

05:15:40 10 MR. LANIER: Agreed.

05:15:42 11 THE COURT: -- him to testify and charging the time to
05:15:47 12 Walmart. It wasn't to go into old documents.

05:15:52 13 MR. LANIER: I agree, Your Honor, and the order I put
05:15:52 14 to my team was that those are the documents I wanted and --

05:15:54 15 THE COURT: So -- so, look, he's testified. If it
05:15:56 16 turns out that a number of those documents were -- had been
05:16:03 17 produced, I'm going to shift some of the time back to you.

05:16:05 18 MR. LANIER: Understood, Your Honor.

05:16:06 19 THE COURT: These were documents, so, you know,
05:16:09 20 there's no question they were authentic documents, but if --

05:16:14 21 MR. MAJORAS: Your Honor, Ms. Fumerton will hand that
05:16:17 22 list to Mr. Lanier right now.

05:16:18 23 THE COURT: All right. Why don't you discuss this,
05:16:20 24 and if I need to reallocate some of the time back to the
05:16:23 25 plaintiffs, I'll do so.

05:16:23 1 MR. MAJORAS: Thank you, Your Honor.

05:16:24 2 THE COURT: Simple as that.

05:16:28 3 Because what I had, I kept a good total. We had. . .

05:16:37 4 Mr. Lanier took 2 -- about 2 and a quarter hours and

05:16:44 5 Mr. Majoras, you took a half hour. So if it turns out I've got

05:16:46 6 to shift some of Mr. Lanier's time back to the plaintiffs'

05:16:52 7 column, I mean, I'll do that, if there was documents that had

05:16:55 8 been produced.

05:16:58 9 Okay. Anything else anyone needed to bring up?

05:17:05 10 MR. STOFFELMAYR: Judge, if you have a handy subject

05:17:07 11 to this issue you just raised, do you have the total hour

05:17:10 12 count?

05:17:12 13 THE COURT: Yes, Mr. Stoffelmayr. All right. This is

05:17:22 14 what I had before today. As of Friday -- I'm going to have

05:17:35 15 to -- I have the total, but now I don't -- I don't have the

05:17:39 16 individual totals. I'll have do that. I'll take this home

05:17:46 17 tonight and get it. I have the total, which was about 73 -- 73

05:17:53 18 and a quarter hours, but I realize I don't have the breakdown.

05:17:57 19 MR. STOFFELMAYR: Thank you.

05:17:57 20 THE COURT: I'll give it to you tomorrow. Remind me.

05:18:00 21 MR. STOFFELMAYR: Okay. Thank you very much.

05:18:01 22 THE COURT: Okay. Anything else?

05:18:05 23 All right. I wanted to see a small number of counsel

05:18:13 24 back in my chambers for about 5 minutes, and I want to keep the

05:18:17 25 number down, not to exclude anyone, but I guess I'd like

05:18:21 1 Mr. Lanier and Mr. Weinberger and then two lawyers from each of
05:18:25 2 the four defendants. I'd like to keep it to 10 for obvious
05:18:28 3 reasons.

05:18:38 4 It won't be long. 5 minutes or so.

05:18:48 5 (Proceedings adjourned at 5:18 p.m.)

6

7 C E R T I F I C A T E

8 I certify that the foregoing is a correct transcript
9 of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

10 /s/ Heather K. Newman
11 HEATHER K. NEWMAN, RMR, CRR

10-25-2021

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